

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD

United States Court of Appeals for the
District of Columbia

APRIL TERM, 1937.

No. 7020

200

CHESAPEAKE & POTOMAC TELEPHONE CO., A
CORPORATION, APPELLANT,

vs.

EDGAR LEWIS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA.

FILED AUGUST 11, 1937

PRINTED OCTOBER 6, 1937

United States Court of Appeals for the District of Columbia

APRIL TERM, 1937.

No. 7020

CHESAPEAKE & POTOMAC TELEPHONE CO., A
CORPORATION, APPELLANT,

vs.

EDGAR LEWIS, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA.

INDEX.

	Original	Print
Caption	A.	1
Declaration	1	1
Pleas	6	5
Joinder of issue	10	9
Memorandum: Verdict for plaintiff for \$750.00.....	10	9
Motion for a new trial.....	10	9
Memoranda: Time to submit motion for new trial extended	11	10
Memorandum of court	11	10
Motion for new trial overruled, judgment on verdict or- dered, judgment	12	10
Memoranda: Appeal noted by defendant, cost bond fixed, &c., supersedeas (\$1000.00) bond of defendant approved and filed, proposed bill of exceptions and notice filed...	12	11
Assignments of error	13	11
Order making bill of exceptions part of record.....	14	12
Designation of record	14	12
Additional designation of record	15	13
Clerk's certificate	16	14

	Original Print	
Notice of Submission of Bill of Exceptions.....	17	14
Testimony of Edgar Lewis	18	15
Samuel H Hartung	33	26
William F. Sager	36	28
Preston C. Wheeler	57	43
Isadore H. Halpern	69	53
Ernest R. J. Carter	70	54
Herbert W. Harrington	72	55
Estil L. Ayers	74	56
Raymond C. Whip	76	58
Noble D. Larner	91	69
Frank E. Bullock	94	71
Willie White	95	71
Odell Young	98	73
Edgar Lewis	101	76
Prayers	101	76

United States Court of Appeals for the District of Columbia

a District Court of the United States for the District
of Columbia

At Law No. 85574

EDGAR LEWIS, *Plaintiff*,

vs.

CHESAPEAKE & POTOMAC TELEPHONE Co., *a Corporation*,
Defendant.

UNITED STATES OF AMERICA,
District of Columbia, s s:

BE IT REMEMBERED, That in the District Court of the
United States for the District of Columbia, at the
City of Washington, in said District, at the times
hereinafter mentioned, the following papers were
filed and proceedings had, in the above-entitled
cause, to wit:—

1 *Declaration*

Filed May 10 1935

In the Supreme Court of the District of Columbia

At Law No. 85574

EDGAR LEWIS, 1341 Florida Avenue, N. W., Washington,
D. C., *Plaintiff*,

vs.

CHESAPEAKE & POTOMAC TELEPHONE Co., *a Corporation*, 725
13th Street, N. W., Washington, D. C., *Defendant*.

Count I.

The plaintiff, Edgar Lewis, sues the defendant, Chesapeake & Potomac Telephone Company, a corporation, for that, heretofore, to wit, on the 10th day of May, 1934, the defendant, having offices and agents and doing business in

the District of Columbia, by and through its agents, servants and employees, entered upon the premises, 1401 Columbia Road, N. W., Washington, D. C., where the plaintiff was employed as janitor, and with force and arms, and against the peace, and wantonly and maliciously, and in the presence of a large number of residents who were living in said premises, assaulted the said plaintiff, and then and there with great force and violence seized and laid hold of the plaintiff, and accused the plaintiff of stealing in the presence of the residents in the premises, aforesaid:

By means whereof the plaintiff suffered great pain and anguish, whereby said plaintiff was publicly exposed to humiliation, mortification, indignity, and disgrace in the eyes of the residents of said premises and as a consequence he did then and there suffer, and has since suffered, great mental anguish by reason of the injuries to his feelings;

Wherefore, the plaintiff brings this action and claims damages in the sum of Ten Thousand Dollars (\$10,000.00), besides costs.

Count II.

The plaintiff, Edgar Lewis, sues the defendant, Chesapeake & Potomac Telephone Company, a corporation, for that, heretofore, to wit, on the 10th day of May, 1934, the defendant, having officers and agents and doing business in the District of Columbia, by and through its agents, servants and employees, entered upon the premises, 1401 Columbia Road, N. W., Washington, D. C., where the plaintiff was employed as janitor, and with force and arms, did violently assault and unlawfully and maliciously did then and there beat, wound, and ill-treat and falsely arrest and imprison the plaintiff in No. 2 Precinct in the City of Washington, District of Columbia, aforesaid;

In consequence whereof the said plaintiff suffered great distress in mind, was greatly humiliated, and sustained severe bodily harm and injury, and his reputation in the community where he lives has been greatly injured thereby;

Wherefore, the plaintiff brings this action and claims damages in the sum of Ten Thousand Dollars (\$10,000.00), besides costs.

Count III.

The plaintiff, Edgar Lewis, sues the defendant, Chesapeake & Potomac Telephone Company, a corporation, for that, heretofore, to wit, on the 10th day of May, 1934, the defendant, having officers and agents and doing business entered upon the premises, 1401 Columbia Road, N. W., Washington, D. C., where the plaintiff was employed as janitor, and with force and arms and against the peace of the United States, assaulted the said plaintiff and then and there seized and laid hold of him, the said plaintiff, with great force and violence, pulled and dragged about
3 the said plaintiff; and also the said defendant, by and through its said agents, servants and employees, then and there forced and compelled the said plaintiff to go from and out of his, the said plaintiff's, place of employment, there situate and being, and into the public street there being, and then and there forced and compelled him, the said plaintiff to go in and through and along divers streets to a certain police office in the District aforesaid, and then and there imprisoned said plaintiff, and kept him in prison there for a long space of time, to wit, two days, the next thereafter ensuing contrary to the laws of the United States, and against the will of the said plaintiff, and without any reasonable or probable cause whatever;

Whereby the said plaintiff was then and there greatly hurt, bruised, wounded, humiliated, distressed, and put to great inconvenience, vexation, trouble and disgrace, and was obliged to incur much labor and difficulty, and to expend a large sum of money, to wit, the sum of One Hundred Dollars(\$100.00), in and about obtaining his release from the said unlawful imprisonment; and was for a long space of time, to wit, three days, prevented and hindered from attending to and carrying on his necessary and lawful affairs and business, whereby he lost his position, which otherwise he might and would have had;

And by reason of the premises, greatly injured his credit and reputation and estimation of his friends, neighbors, employer, and of divers persons with whom he had and desired to have business, whereby he sustained great loss;

Wherefore plaintiff brings this suit and claims damages in the sum of Ten Thousand Dollars (\$10,000.00) besides costs.

Count IV.

And the said plaintiff further sues the said defendant, for that, whereas, heretofore, to wit, on the 10th day of May, 1934, at the District of Columbia, he, the said plaintiff, was and always had been a good, true and honest man, and as such he had always behaved himself, and he had, in fact, not been guilty, or, until the time of the committing by the defendant by its agents, servants and employees of the grievances hereinafter stated, had not been suspected to be guilty of larceny, or theft, or of any other such crime, by reason whereof the said plaintiff had deservedly obtained and then had the good opinion and credit of all his friends, neighbors, employer and of all other persons to whom he was known;

Yet the said defendant aforesaid, well knowing the premises, but contriving and maliciously intending to injure the said plaintiff, in his good name, fame, and credit, and to bring him, the said plaintiff, into public scandal, infamy, and disgrace, and to cause it to be suspected, and believed that he, the said plaintiff, had been guilty of the crime of larceny, and to subject him, the said plaintiff, to the pains and penalties by the laws of the United States, made and provided against, and inflicted upon persons guilty of said crime, and to vex, harass, oppress, impoverish, and wholly ruin him, the said plaintiff, did on the day and at the place aforesaid, in a certain discourse which the said defendant, by and through its agents, servants, and employees, then and there had, of and concerning the said plaintiff, with Willie White and Odel Young, and other persons and, in the presence and hearing of the certain Willie White and Odel Young and other persons, falsely and maliciously speak, declare and publish, of and concerning the said plaintiff, the false, malicious, and defamatory words following, that is to say: "Has he (meaning the plaintiff) hung around the offices (meaning the buildings of the defendant)? Is he (meaning the said plaintiff) the one that stole the watch and overcoat?" The said defendant, aforesaid, meaning to be and being understood to mean that the said plaintiff had feloniously stolen, taken and carried away a certain watch and overcoat from the premises of said defendant and that the said plaintiff had committed and was guilty of the crime of larceny;

By means of the speaking and publishing of which said false, scandalous, malicious, and defamatory words, by the defendant aforesaid, the plaintiff has been, and is, greatly injured in his good name, fame, and credit, and brought into public scandal, infamy, and disgrace with and amongst all of his friends, neighbors, employer, and other persons to whom he, the said plaintiff, is known, and to whom the innocence and integrity of the said plaintiff in the premises is unknown, and divers of such persons have, by reason of the said speaking and publishing by the said defendant of the false, scandalous, malicious, and defamatory words, been caused to suspect and believe, and do suspect and believe that the said plaintiff has been and is guilty of the crime of larceny, and have refused, and do refuse, to have any transactions, employment, acquaintance, or discourse with the said plaintiff, as they were before used and accustomed to have, and otherwise would have, to the damage of the plaintiff;

Wherefore, the said plaintiff brings this action and claims damages in the sum of Ten Thousand Dollars (\$10,000.00) besides costs.

ISADORE H. HALPERN,
Attorney for Plaintiff.

6

Pleas

Filed June 5 1935

* * * * *

Plea to first count.

The defendant, The Chesapeake and Potomac Telephone Company (sued herein as "Chesapeake & Potomac Telephone Co."), for plea to the first count of the declaration of the plaintiff, filed herein says:

1. It admits that it is a body corporate, doing business in the District of Columbia, as in said count of said declaration alleged.

2. It denies that by and through its agents, servants and employees, it entered upon the premises, 1401 Columbia Road, N. W., Washington, where plaintiff was employed as janitor, and with force and arms, and against the peace, and wantonly and maliciously assaulted the plaintiff, and

with great force and violence seized and laid hold of the plaintiff and accused the plaintiff of stealing, as in said count of said declaration alleged.

3. It denies that by means of any wrongful act committed by the defendant, the plaintiff suffered great pain and anguish, and that plaintiff was publicly exposed to humiliation, mortification, indignity and disgrace, or that plaintiff at any time suffered great mental anguish by reason of any injuries caused to his feelings by any act of this defendant, as in said count of said declaration alleged.

Plea to second count.

The defendant, The Chesapeake and Potomac Telephone Company, for plea to the second count of the declaration filed herein, says:

1. It admits that it is a body corporate, doing
7 business in the District of Columbia, as in said count of said declaration alleged.

2. It denies that by and through its agents, servants and employees, it entered upon the premises, 1401 Columbia Road, N. W., Washington, D. C., where plaintiff was employed as janitor, and with force and arms, did violently assault and unlawfully and maliciously did wound and ill-treat and falsely arrest and imprison the plaintiff in No. 2 Precinct in the City of Washington, District of Columbia, as in said count of said declaration alleged.

3. It denies that in consequence of any wrongful act of this defendant, the plaintiff suffered great distress of mind, was greatly humiliated and sustained severe bodily harm and injury, and the reputation of the plaintiff in the community in which he lives has been greatly injured, as in said count of said declaration alleged.

Plea to third count.

The defendant, The Chesapeake and Potomac Telephone Company, for plea to the third count of the declaration filed herein, says:

1. It admits that it is a body corporate, doing business in the District of Columbia, as in said count of said declaration alleged.

2. It denies that by its officers and agents it entered upon the premises, 1401 Columbia Road, N. W., Washington, D.

C., where plaintiff was employed as janitor, and with force and arms and against the peace of the United States, assaulted the plaintiff and seized and laid hold of the plaintiff, with great force and violence, pulled and dragged about the said plaintiff, as in said count of said declaration alleged.

3. It denies that by and through its agents, servants and employees, it forced and compelled the plaintiff to go
8 from and out of the plaintiff's place of employment, into the public street, and forced and compelled plaintiff to go in and through and along divers streets to a certain police office in the District of Columbia, as in said count of said declaration alleged.

4. It denies that it imprisoned plaintiff and kept him in prison, contrary to the laws of the United States, and against the will of the plaintiff, without any reasonable or probable cause, as in said count of said declaration alleged.

5. It denies that by reason of any wrongful act committed by defendant, the plaintiff was greatly hurt, bruised, wounded, humiliated, distressed, and put to great inconvenience, vexation and disgrace, and was obliged to incur much labor and difficulty, and to expend any sum of money whatsoever in and about obtaining his release from any alleged unlawful imprisonment, as in said count of said declaration alleged.

6. It denies that by reason of any wrongful act of this defendant, the plaintiff was prevented and hindered from attending to and carrying on his necessary and lawful affairs and business, and that plaintiff lost his position by reason thereof, as in said count of said declaration alleged.

7. It denies that by reason of any wrongful act committed by this defendant, the plaintiff was greatly injured in his credit and reputation and estimation of his friends, neighbors, employer, and other persons with whom plaintiff had and desired to have business, or that plaintiff sustained great loss, as in said count of said declaration alleged.

Plea to fourth count.

1. Defendant can neither admit nor deny that on, to wit, May 10, 1934, plaintiff was and always had been a good, true and honest man, and as such plaintiff had always behaved himself and had not been guilty, nor suspected to be

9 guilty of larceny, or theft, or of any other such crime, or that by reason thereof the plaintiff had deservedly obtained, and then and there had the good opinion and credit of his friends, neighbors and employer, and of all other persons to whom plaintiff was known, as in said count of said declaration alleged.

2. Defendant denies that well knowing the premises alleged in said count of said declaration, and for the purpose and intent of injuring plaintiff, as in said count of said declaration alleged, it falsely and maliciously did speak, declare and publish of and concerning the plaintiff the alleged false, malicious and defamatory words mentioned in said count of said declaration, and it denies the innuendo alleged in said count of said declaration.

3. It denies that by means of the speaking and publishing of the alleged false, scandalous, malicious and defamatory words by this defendant, the plaintiff has been and is greatly injured in his good name, fame and credit, and that plaintiff was brought into public scandal, infamy and disgrace, with and among all of his friends, neighbors, employer and other persons to whom plaintiff is known, and to whom the innocence and integrity of the said plaintiff in the premises is unknown, as in said count of said declaration alleged.

4. It denies that by reason of the speaking and publishing by this defendant of the alleged false, scandalous, malicious and defamatory words, divers persons have been caused to suspect and believe, and do suspect and believe, that the plaintiff has been and is guilty of the crime of larceny, and that such divers persons have refused and do refuse to have any transactions, employment, acquaintance or discourse with the plaintiff, as in said count of said declaration alleged.

GEO. P. HOOVER,
Attorney for Defendant.

10

Joinder of Issue.

Filed June 6 1935

* * * * *

The plaintiff joins issue on the pleas of the defendant filed in the above entitled cause.

* * * * *

ISADORE H. HALPERN,
Attorney for Plaintiff.

Memorandum.

January 26, 1937.

Verdict for plaintiff for \$750.00.

Motion for a New Trial.

Filed January 30 1937

* * * * *

Comes now the defendant, The Chesapeake and Potomac Telephone Company, by its attorney, George P. Hoover, and moves the Court to set aside the verdict of the jury, and to grant a new trial in the above entitled cause, and for reasons therefor shows to the Court:

1. The verdict is contrary to law.
2. The verdict is contrary to the evidence.
3. There is no evidence in the case legally sufficient to support the verdict of the jury.
4. The Court erred in denying the defendant's motion for an instructed verdict.
5. The Court erred in denying certain instructions requested by defendant.
- 11 6. The Court erred in charging the jury.

GEO. P. HOOVER,
H.
Attorney for Defendant.

Memoranda.

February 11, 1937.

Time to submit motion for new trial extended to and including February 26, 1937.

February 26, 1937.

Time to submit motion for new trial extended to March 13, 1937.

Memorandum of Court.

Filed April 26 1937

* * * * *

A close question is presented as to whether there is evidence to support the verdict. At the close of the testimony, it was concluded the evidence was sufficient to go to the jury. After a careful review of the record, I think that conclusion was correct.

The motion for new trial is *denied*.

JOSEPH W. COX,
Justice.

April 26, 1937.

12 District Court of the United States for the
District of Columbia.

Monday, April 26, 1937.

Session resumed pursuant to adjournment, Hon. JOSEPH W. COX, Justice, presiding.

* * * * *

Upon consideration of the motion filed herein, for a new trial, the same having been heretofore duly argued and submitted to the Court, it is ordered that said motion be, and the same is hereby overruled, and judgment on the verdict is ordered.

Wherefore, it is considered that plaintiff recover of the defendant herein the sum of Seven Hundred and Fifty Dollars (\$750.00), together with costs of suit to be taxed by the clerk and have execution thereof.

Memoranda.

April 28, 1937.

Appeal noted by defendant from judgment of April 26, 1937. Cost bond fixed at \$100. or \$50. cash or supersedeas bond at \$1000.00. Cox, J.

May 5, 1937.

Supersedeas (\$1000.00) bond of defendant approved and filed.

May 19, 1937.

Proposed bill of exceptions and notice—filed.

13

Assignments of Error.

Filed May 24 1937

* * * * *

The defendant hereby assigns as error committed by the trial court in the above entitled cause the following:

1. Error of the court in denying the motion of the defendant at the close of the whole evidence to direct the jury to return a verdict for the defendant.

2. Error of the court in refusing to grant defendant's Prayer No. 1.

3. Error of the court in refusing to grant defendant's Prayer No. 2.

4. Error of the court in refusing to grant defendant's Prayer No. 3.

5. Error of the court in refusing to grant defendant's Prayer No. 4.

GEO. P. HOOVER,

H

Attorney for Defendant.

Service of a copy of the foregoing Assignments of Error acknowledged this 24th day of May, 1937.

ISADORE H. HALPERN,

LESTER WOOD per I. H. H.

Attorneys for Plaintiff.

District Court of the United States for the District of
Columbia.

Tuesday, June 15, 1937.

Session resumed pursuant to adjournment, Hon. Joseph
W. Cox, Justice, presiding.

* * * * *

14 Come now the parties hereto by their respective
attorneys of record, and thereupon, the defendant
by its attorney submits to the Court its Bill of Ex-
ceptions taken at the trial of this cause and prays that the
same be signed and made of record, *nunc pro tunc*, which
is hereby accordingly done.

Designation of Record.

Filed May 22 1937

* * * * *

Comes now the defendant in the above entitled cause, and
designates the following to constitute the transcript of
record for filing in the United States Court of Appeals for
the District of Columbia, and requests the Clerk to include
therein:

1. Declaration of the plaintiff, filed May 10, 1935.
2. Pleas of defendant, filed June 5, 1935.
3. Plaintiff's joinder of issue, filed June 6, 1935.
4. Memorandum: Verdict of jury entered January 26,
1937.
5. Motion of defendant for new trial, filed January 30,
1937.
6. Memorandum: Time to submit motion for new trial
extended to February 26, 1937.
7. Memorandum: Time to submit motion for new trial
extended to March 13, 1937.
8. Memorandum: Motion for new trial overruled and
judgment on verdict entered April 26, 1937.
9. Memorandum: Appeal noted in open court by defend-
ant, and cost bond fixed at \$100 or \$50 cash, or supersedeas
bond at \$1000, April 28, 1937.

10. Memorandum: Undertaking on appeal to act as supersedeas, with United States Fidelity & Guaranty Co., surety, approved and filed, May 5, 1937.

11. Memorandum: Proposed bill of exceptions filed, May 19, 1937.

12. This designation of record.

GEO. P. HOOVER,
H.

Attorney for Defendant.

May 22, 1937.

15 Service of a copy of the foregoing designation of record acknowledged this 22nd day of May, 1937.

ISADORE H. HALPERN,
LESTER WOOD per I. H. H.
Attorneys for Plaintiff.

Additional Designation of Record.

Filed June 15 1937

* * * * *

Comes now the defendant in the above entitled cause, and designates the following to constitute an addition to the transcript of record for filing in the United States Court of Appeals for the District of Columbia, and requests the Clerk to include therein:

1. Memorandum, June 15, 1937: Bill of exceptions settled, approved and ordered of record.

2. Bill of exceptions.

3. This additional designation of record.

GEO. P. HOOVER,

Attorney for Defendant.

June 15, 1937.

Service of a copy of the foregoing additional designation of record acknowledged this 15th day of June, 1937.

LESTER WOOD, I. H. H.
ISADORE H. HALPERN,
Attorneys for Plaintiff.

16 District Court of the United States for the
District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia. ss:

I, CHARLES E. STEWART, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered from 1 to 15, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copies of which are made part of this transcript, in cause No. 85574 at Law, wherein Edgar Lewis is Plaintiff and Chesapeake & Potomac Telephone Co., a Corporation, is Defendant, as the same remains upon the files and of record in said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 7th day of July, 1937.

(Seal) C. E. STEWART,
Clerk.

17 In the District Court of the United States for
the District of Columbia.

At Law No. 85,574.

EDGAR LEWIS, *Plaintiff,*

vs.

CHESAPEAKE & POTOMAC TELEPHONE COMPANY, a
Corporation, *Defendant.*

To Isadore H. Halpern, Esq., and
Lester Wood, Esq.,
Attorneys for Plaintiff:

Please take notice that the within bill of exceptions on the appeal of the defendant, The Chesapeake and Potomac Telephone Company, will be called to the attention of and submitted to the Court on June 15, 1937, at ten o'clock, A. M., or as soon thereafter as counsel can be heard, for the

purpose of having the same settled, signed and sealed by the Court.

GEO. P. HOOVER,
Investment Building,
Washington, D. C.
Attorney for Defendant.

Service of the foregoing notice and copy of said bill of exceptions acknowledged this 19th day of May, 1937.

ISADORE H. HALPERN,
LESTER WOOD per N. H.
Attorneys for Plaintiff.

18 In the District Court of the United States for
the District of Columbia.

At Law No. 85,574.

EDGAR LEWIS, *Plaintiff*

VS.

CHESAPEAKE & POTOMAC TELEPHONE COMPANY, a
Corporation, Defendant.

Bill of Exceptions.

BE IT REMEMBERED that the above entitled cause came on for trial on Tuesday, January 19, 1937, and ending Tuesday, January 26, 1937, before Mr. Justice Cox and a jury duly impaneled and sworn to try the issues between the plaintiff, Edgar Lewis, and the defendant, Chesapeake & Potomac Telephone Company, parties to said cause, and proceedings were had, rulings made by the Court and exceptions taken and noted as follows:

And thereupon after the jury had been duly sworn, the plaintiff, **Edgar Lewis**, to maintain the issues on his part joined, after having been duly sworn, testified as follows:

My full name is Edgar Lewis. I live at 1341 Florida Avenue, Northwest. On May 10, 1934, I lived at the same address, and on that day I worked at 1401 Columbia Road, Washington, D. C. On the morning of May 10, 1934, in the neighborhood of about 9:30 in the morning, I was mopping the first floor. Two men came through the front

entrance, and they asked me where the manager's
19 office was, the resident manager. I told them where
the place was. They went there and they stayed
about four or five minutes. They came back and they says,
"Come on and go with us." I says, "Go where?" They
says, "You come and get your coat and go with us." I
started not to go. They grabbed hold of my arm and
carried me down to the basement. When we got to the base-
ment, I still was saying I wasn't going. Then one of them
showed me a badge and told me, "Get your hat. You are
going with us." At that time a lady from upstairs came
downstairs and asked, "What is the matter?" I told her
I didn't know what it is all about. They carried me down;
made me get my coat, and carried me through the alley.
They didn't make any statement what they were taking me
for at that time. They carried me out on 14th and Columbia
Road. A car was parked over there at 14th and Columbia
Road. The apartment where I worked is 1401 Columbia
Road, and the car was parked on the other side of 14th
Street on the uptown side of the street. There was some-
one in the car. There were two men sitting in the front.
I recognized one of them was Whip. I didn't know the
other one. Whip was sitting at the wheel in front. Whip
is a man who works for the Telephone Company. He has
represented them as a detective or something. I know that
because I saw him down at 14th and R before. I worked
for the Telephone Company for five years and five months.
I worked down at 14th and R five months and was trans-
ferred to Columbia Road. I stayed up there when I was
discharged. I started to work for the Telephone Company
around the 15th of January, 1927. I ceased to work for the
Telephone Company around May, I think, in the year 1933.

I worked about five or six months of 1933. I had
20 seen Whip at the Telephone Company. I saw him
down there. I did have a discussion with Mr. Whip
prior to that occasion. I had a conversation with Mr. Whip
about a year or so before I was taken out of the Columbia
Road apartment house. It was while I was still with the
Telephone Company.

Thereupon it was admitted by counsel for the defendant
that Mr. Whip was employed by the defendant as an in-
vestigator or detective.

Witness resuming testified: I saw Whip at the North Exchange, 14th and R Streets, when I was working for the Telephone Company. I would say I saw him occasionally in the morning. I saw him come in the building. He used to use a key to unlock the door. Most of the officials have keys to come in the front door at the North Exchange building, 14th and R Streets. I never saw him up in the Columbia Building, because I would not be up there. I worked up there about five months. I didn't have charge of taking any stuff upstairs, but at the North Exchange I had charge of taking that stuff upstairs when I got there in the morning. When I worked for the Telephone Company my duties were that of janitor. Besides being a janitor, I relieved in the elevator and worked in the restaurant cleaning up in the lunch room. That was a lunch room for the employees of the Telephone Company. The stuff I would take upstairs would be milk. Whatever janitor gets there first in the morning is supposed to carry milk upstairs. I had known Mr. Whip while I worked for the Company before. I went to work in 1927. I worked for the Telephone Company five years and five months. I learned to know Whip about
21 a year after I went to work for the Telephone Company.

When I was taken out of the apartment house and taken to the automobile Whip was sitting at the wheel of the car. I am positive that he is the same man that I have been talking about. I knew Whip. When I got down to the police station on U Street, Whip accused me of taking the coat and watch. The watch was taken from Columbia Road and the coat was taken from the North Exchange. By Columbia Road I mean the Columbia Exchange, which is located right across from the building I worked at, the Carlisle apartment. He accused me of taking both. He made that accusation in the station house and Mr. Wheeler and Mr. Sager were there. In response, I said I didn't take anything, and didn't know anything about it. I was working at Columbia Road, and at the time this stuff was taken I had been going to work at seven o'clock in the morning, and I was told by the officers that the stuff was stolen from the North Exchange at 10 o'clock, between 10 and 11 o'clock. When I left the apartment house I got in the car where Whip and another man were sitting in the front, and two detectives

got in the back with me. They carried me to 14th and S Streets where the Lucky Strike bowling alley is. There is a second-hand clothing store there, and one detective got out and went in the store. I stayed in the back of the car. They stayed there four or five minutes and came back to the car. Nothing was said to me by anyone in the car. I was not taken out of the car. They carried me from the North Exchange. I saw the man who came to the door of the store. I didn't know he worked there. After the de-

22 tective came out of the store he came back and got in the car. I cannot remember which detective it was, whether Sager or Wheeler, but one of them. Whip stayed in the car at the wheel. After we left that store they carried me to the North Exchange. When we got to the North Exchange Mr. Whip got out and he went in through the back entrance where the janitors do in the morning—they never use the front door. We had to go to the back door because Mr. Whip went out and stood there five minutes and came back with two colored boys, one named White and one named Young. I knew them when I worked there. Whip brought the men over, brought them to the car and said, "You know this fellow?" They said, "Yes, Eddie", as they called me. Whip said, "When was the last time you saw him around this building?" They said they never saw me since I left there, since I stopped working there. Mr. Whip was the one that asked him that question. White asked me what the trouble was. I told him I didn't know what was the trouble. Nothing was said by Whip at that time. Whatever was said was said after they took me to the station house on U Street. Whip was the one who asked these men "Do you know this man?", and asked if they had seen me around. We stayed there long enough to identify me, whether they saw me around there or not, and then they carried me to the station house on U Street. Whip drove the car over to the station house. He was still driving the car. I don't know what number precinct it is, but it is right on U Street. That is the only station house on U Street; it was old No. 8. When we got around to the station house they accused me of taking the stuff. They carried me out of the automobile and we went into the sta-
23 tion house. We all got out and went into the station house. I don't know who the men were sitting

in front with Whip. I never saw them before, but they all went in the station house. When we went in the station house they carried me upstairs in a room and then they questioned me again. All of them questioned me. Whip asked me if I had any jewelry and I said, "Yes, I have a watch." They said, "Where is it?" I said, "Across the bridge." By that I meant it was over at the pawnshop, Hornings. Whip asked me about the coat. I told them I had three or four coats, that I didn't need to steal anyone's coat. They kept me up there and pressed me and brought me down to the desk. When I say "they", as to whether they all brought me down to the desk, Whip left a little before I came down and detectives Sager and Wheeler came down with me. After that they carried me to a desk and booked me up there and took my stuff away and took my belt off and placed me in a cell. There was one man in the cell with me. They placed me in the cell I guess around about 11 o'clock in the morning. I remained in the cell until they carried me to headquarters some time that night. They placed other people in the cell at about night time, and there was quite a crowd in there. There were about four or five; a couple of drunks came in there and stayed until they carried me to headquarters, carried us all down to headquarters in a room and carried me in a room down there. When they carried me to headquarters I met Mr. Whip when I got off the elevator. I didn't have anything to eat in the cell until Mr. Halpern brought me something to eat that night. That was around 9 O'clock, between 8 and 9. Mr. Halpern is one of my attorneys. I really
24 do not know what time I was taken to headquarters, because it was so dark in there it looked like midnight in the cell. I was not permitted to have anyone visit me while I was in the cell, didn't see my wife or my mother-in-law. I didn't make any request that they call my wife. There were no facilities in the cell such as drinking water or accommodations. I didn't have anything in the cell. I don't know exactly the time I came down to headquarters. They took me around the back way and put me in a wagon. It was after dark, I am sure of that. It was a patrol wagon. There was about five or six other men placed in there with me. From the station house they carried me to headquarters. I rode up on the elevator and going through

the corridor I met Mr. Whip. At police headquarters I got off the elevator to go through the hall leading back to the room where they do the finger-printing and questioning. When I got off the elevator Mr. Whip and Mr. Sager were there. Whip was close to the elevator, I don't know how close, and walked back to the room where they questioned me once more. Whip and Sager walked back with me. The officer down there met us coming through and said, "What have you got him for, picking telephone boxes?" and Whip said, "No, not that." I don't know who the officer was; but Whip said, "No, not that". Whip went into the room to which I was taken. In that room they started questioning me about the coat and the watch again, this time Mr. Sager. I was sitting in there when they started questioning me, and I do not know what occurred, but Mr. Sager called me a damn liar and I told him he was another. He got out of the chair and walked toward me and I got up to stand in front of the chair. I happened to look
25 around and there was a man standing back of me who winked at me, but I did not know who he was. He said, "Mr. Sager, may I have a word to say to him?" He said that before me—did you have anything to say? I did not know who that person was, but I found out when I went back to work that it was from my manager. She sent him down to see if he could do anything for me. Mr. Whip was in the room when that occurred. In that room Whip didn't say anything concerning the watch or overcoat. All the questions he did, all the questioning he did was up on U Street about the watch and overcoat. From that room I was carried through to the finger-printing room. I cannot recall who were in there, but there were three or four men standing around when they took my finger prints. I cannot remember whether Whip went into the finger-print room. My finger prints were taken. From the finger print room they carried me on up on a platform, and a whole lot of men were up there. They did not take our pictures in front of the platform, but I couldn't see who they were because the light was so bright. I did hear voices. I could not recognize those voices because there were too many of them and all talking. My picture was taken. While I was on the platform somebody said that about being smart, I don't know who it was, the reason why, that he told me—

he asked me the question if I came from New York to Washington, or rather, he said, or asked me where did I come from. I think it was Mr. Wheeler who asked me that—not Mr. Wheeler, Mr. Sager. He asked me where did I come from. I said from New York. Somebody says, he is a liar, I do not know who, and he says, the man is from the West Indies. I said, you did not ask me where I was born
26 but where I came from when I came to Washington.

I was born in the West Indies. When I came to Washington I came from New York in 1918. I was at police headquarters about three-quarters of an hour. I was not questioned any more after my photograph was taken. We were carried back to the station house. We all went back together. I really couldn't tell you what time we arrived back at the station house. I didn't see any clock. The same men were carried back to the station house. We all came back to the precinct on U Street. I went back with the other prisoners and the sergeant that was on the back of the patrol wagon. He stayed in the back and another officer drove. I do not know the names of the officers. When I got back to the precinct there I met my mother-in-law and my father-in-law standing at the desk of the precinct. I think they had already seen Mr. Halpern (referring to one of the counsel sitting at the trial table). At the station house they took me there and took my belt away from me again after I got there. I was placed back in the cell and I got in the cell and it was so crowded, five or six men in there, I had to stand up in the cell all night until morning. I got out next day about noon; the kids were out for lunch. It must have been around lunchtime. I don't know the exact time, but my impression is it was near noon. I was arrested on Thursday. I did have a conversation with the sergeant at the desk when I was released after being taken out of the cell. I don't know his name. I was never served with any warrants at any time. I was never told by Mr. Whip or any of the men who were in the automobile that they had a warrant for me. When I was released I
27 went home. I went through the back door. I didn't want to go through the front because I knew the kids knew I was arrested. I didn't go to work until the next day. I had a conversation with the manager over the telephone. As a result of that conversation I did not go to

work until the next day. I worked at the apartment house until pay day. On pay day I didn't get my money that evening. I went on home. I went to work the next morning and the manager handed me my money and told me she had another man. I was released. I did not obtain other employment until about six months after that. During that interval I went back to the firm that I had worked for. I didn't go back to see the manager. I went to the firm. I saw the gentleman there that had charge of the place and I applied for work there. In applying for work references were requested of me. As to whether I furnished references, I called the manager each place I got to. They had to call the manager up. I didn't get employment when the manager was called. I went to about five or six places in attempting to secure work. That was over a period of five or six months. When I worked at the Columbia Road apartment house I was making \$65 a month. I had worked at that apartment house for about six months prior to that time. After I went around different places and could not get a job I decided I would go back to the place that I quit to get this job that would pay me more money. I don't mean the Columbia Road apartment, but the place where I worked before that. It was the Conard Apartment, 1220 I Street, and the firm was Weaver Brothers. That was the one I went back to, because I could not get employment elsewhere. I did not get a job there right away. I

28 waited about a month. I could not get any job around the office, because I quit the job and went to the place where I could get more money. I didn't notify them but I quit and told the manager that morning I had a job and got more money—one of the boys was taken sick at 1220 I Street. That is where I work now, running the elevator. The manager called me and asked me if I wanted that place. As a result of being called by the manager I went and worked five days, and the boy returned on the job. I was called back there and told to take my regular job back as house man in the building at \$45 a month. That is my salary now. I went to work there around October or November, 1934. I had previously worked for the Telephone Company. I ceased to work for the Telephone Company I think in 1933, and I was sick. I worked two weeks. When I was working for the Telephone Company I was making

\$21 a week. I left the Telephone Company after I became sick. After I got well I went to 1111 North Capitol Street to see the head man there, the Telephone Company official. I did not go back to work for the Telephone Company. I returned to the Company but did not get the job back. While I was sick I was paid by the Telephone Company for two weeks. I was paid on Wednesday, pay day every Wednesday. I got paid every Wednesday. I was not given a check when I went back to see the telephone official. I did not get a check for three weeks, some time in May. I had a whole back week's pay. They told me I had two weeks vacation. The check I received from the Telephone Company was for \$98. That paid me off in full. I was put to expense as a result of being held at the station house.

29 We had a lawyer. My family had to hire a lawyer for me and it cost me \$100. I am working at the present time at 1220 I Street, the Conard Apartment, which is maintained by Weaver Brothers. They are the same concern for whom I worked before I went to the Columbia Road apartment house. Weaver Brothers do not own the Columbia Road apartment house. The Washington Corporation owns it. Weaver Brothers is the one I am working at now. To my knowledge my other relatives and neighbors learned of my arrest.

Cross Examination

Thereupon on cross-examination the witness testified: I was born in the West Indies. I am going on 35 to 36 years old. I came to America in 1913, and landed at Ellis Island, New York. When I was down at the police headquarters on the night of May 10, 1934, a question was raised at that time as to whether I was rightfully or wrongfully in this country. I do not think I was wrongfully in the country, but the question was raised that night.

I went to work for the Telephone Company around the 15th of January, 1927, at the North Exchange, 14th and R Streets. I worked there until May, 1933, five years and five months, with the Company. I got my five years pin while I was at the North Exchange and went from there to Columbia Road. I left the Telephone Company in 1933. Maybe I worked nearly six years. I figured it at five years and five months. I know I got my five year pin that year, the

five year period. I put it at five years and five months. It may have been six years.

I worked at the Columbia Exchange on Columbia
30 Road about six months as assistant janitor. During the time I worked for the Telephone Company I became acquainted with Mr. Whip. On May 10, when these two men came to the apartment house where I was at 1401 Columbia Road, they didn't tell me they were police officers, and never told me who they were. I have since learned that the two men, one was Wheeler and the other was Sager. I found out after I got to the station house that they were detectives and members of the police department of the District of Columbia. I did learn that. From the apartment house I went over to this car which was parked on the east side of 14th street going north. The apartment house where I worked was on the other side of Columbia Road from the Columbia Exchange. The apartment house is at the northwest corner of 14th and Columbia Road. The car that I got into was a four-door car, but I don't know the make. It was not a police car, I am quite sure of that. Mr. Whip and his associate sat in front. He was sitting up front, as far as I know he was sitting up front. I know Mr. Wheeler when I see him. It is not a fact that when I went over and got in this car that Mr. Whip and Mr. Renninger were in the back of the car, and I did not get in the back of the car where he was. Both detectives got in the back of the car with me. It is not a fact that Mr. Wheeler, one of the detectives, got in the front of the car and drove the car. I do not think he did. It is not a fact that Wheeler was the man who got at the wheel of this car and drove the car away from there after I got in. Sager was not in the front seat with Wheeler. When I got into the car Mr.

Whip did not say anything to me. I could not re-
31 member him saying, "Hello, Lewis." I don't remember him saying anything.

From the Columbia Road place where they took me from we went to Sam's second-hand store on 14th Street. One of the men in the back got out and went into Sam's second-hand clothing store, stayed there three or four minutes, and someone came to the door of the store, drove away from there and went to R Street Exchange, and when we got to R Street Exchange, Whip got up in the front of the

car and went in and brought those two colored boys back out and asked me if I knew those fellows and they say, "Yes", and he asked when was the last time you saw him around the building. They said, "We have not seen him since he left the Company." From there they carried me to the station house.

Sam's place is below S Street on 14th Street, right across from the Lucky Strike Bowling Alley. It is on the downtown side. That would be on the west side. It is not a fact that when I got into this car they drove me right to the station house. It is not a fact that after I was at the station house some little time that we came out and got in the car and went to the North Exchange at 14th and R. I think we went straight to the 14th and R Exchange. I am positive about that. Mr. Whip drove the car to the North Exchange. I went to the station house once. That is after I left the North Exchange on R Street. I mean to say that all of the time that I was in this car the car was being driven by Mr. Whip. I am positive of that.

When I went to the station house I was questioned. At the station house Mr. Whip accused me of stealing the watch and overcoat. At the station house Whip ac-
32 cused me of stealing clothing, and there were three or four men present. Mr. Wheeler was there, Mr. Sager was there, and this man Mr. Whip was there. That was said in the presence of those men.

When we went to the North Exchange we drove in the alley back of the telephone building. Whip got out of the car. I am positive of that. He went in the back of the building from the rear and came back with two colored men who worked there for the company. That is Willie White and Young. I am positive Whip did that. When I went to the station house on U Street I went upstairs in one of the rooms. It was some room in the station house. Whip left about five or ten minutes after that. After we went to the station house Whip stayed there about ten minutes. Whip and the man who was with him left. I do not know who he was, but it was some man with glasses on. He got up in front with Whip. He left with Whip. When Whip left I was up in this room. I came down after Whip left. At the time Whip left I was up in this room. I was with the two officers Wheeler and Sager. It was night time

when I went down to police headquarters. I could not tell exactly what time it was, but it was dark. I have no idea what time; I know it was dark. I went down there in the patrol wagon with about five other prisoners. I saw Whip at headquarters just as I got off the elevator, and Mr. Whip and this gentleman named Mr. Sager met me after I got off the elevator with the officer that carried us down there. The headquarters where I was taken was on Louisiana Avenue, and I went into the building, and I saw Mr. Whip upstairs. I do not know which floor it was. It was
33 the floor where the finger-printing room is on. I met him after I got off the elevator. He was standing in the hall. He did not talk to me. He walked up alongside of me with Sager and some man, an officer there, and the man said, "What have you got him for; picking telephone boxes?" They said, "No, not that." Some man spoke to Whip and made that remark, a police officer, and Whip made that reply. Whip never said anything else.

I was released next day around noon; the children were back from lunch. I still owe the lawyer \$100. That is lawyer Halpern. My mother-in-law engaged him to get me out of this, and I agreed to pay him \$100. That is the \$100 I testified to on my direct-examination.

Thereupon further to maintain the issues on his part joined the plaintiff called as a witness **Samuel H. Hartung** who having been duly sworn testified as follows:

My name is Samuel H. Hartung. I am connected with the Metropolitan police force at Precinct No. 2. I did bring certain No. 2 precinct records with me this morning in response to a subpoena duces tecum. I have the record of arrests. That is the book of entries when prisoners are brought into the precinct. The original book of entry. That is the book that is kept on the desk that you stand up and write. We run two books, have to, doing a volume of business, one for our own precinct work and others for cases carried on outside precincts. This is what is known as an outside book. In other words, detective bureau cases and any cases picked up by officers of another precinct are taken on this book, anyone not connected with No. 2. This
34 would be the book. The particular case, as I understand, in question was a detective officer case. This book is the record of arrests. It is one of them. The

officer at the desk has two of them, as I understand. I did not bring the precinct book. I could bring that down. I have brought the book I was notified, with the record of this particular case on. It is not in the other book. I did look, and it is not in the other book. This is the book in which I entered the detective cases. Owing to our volume of business it is impossible for us to run all the cases that come in the precinct on the arrest book; and the cases of the detectives, the detective officers or any officers of the outside precincts, that are picked up, are on a separate book.

I do not know who the gentleman was who called up the station and asked for the book, but they called for the record of arrests of this particular man, and I looked in both cases and found it was in this particular book, and it is not in the other one. The notations in the book are made by one of the station clerks that is on duty, or anyone on duty behind the rail or desk.

Thereupon the witness turned to the entry in the book of date May 10, 1934, and testified he found the entry of Edgar Lewis, and that, as witness recalls, the handwriting looks like that of Officer T. O. Thoman. I did not make the entry. There is no entry there in my handwriting.

Thereupon the witness, referring to the entry in the book, testified that the entry in the book is headed "8 o'clock a. m. Thursday, May 10, 1934," which is the beginning of our police station day. This particular case was

booked 9.55 a. m. May 10, 1934, last name Lewis. We
35 always book the last name first. The first name is Edgar Theodore, address given, 1341 Florida Avenue Northwest, 33 years old, color colored, citizen of the United States, janitor by occupation, married, can read and write, charged at the time with investigation, complainant, Wheeler of the Detective Office, W. F. Sager, the officer.

These cases, as is the custom with the detective office cases, are forwarded to the Detective Bureau by way of teletype. The record of the arrest is sent to headquarters by teletype. Incidentally, I sent that in myself. I do not know the time, but it is marked "C. B." By that I mean I sent the teletype record of this arrest on this book to the detective officer for their information. Under the dispo-

sition column is marked that this case was dismissed 11.30 a.m. on May 11, 1934, the following day. The entry states: "Property taken from the prisoner, two dollars, a belt—search made by Officer H. H. Miller; placed in No. 8 cell." There is a record here that shows that he was in another cell besides No. 8. It looks like there is a 5 under the 8. Possibly they may have transferred him from one cell to the other, which we often do. That is the entry which is all in the same handwriting, of the whole case all the way through. The disposition of the case was entered later. The disposition entry is: "Dismissed, 11:30 a.m. 5/11/34, the following day."

I was connected with the precinct at that time. I have been there going on eight years. I know the practice of entries and records at the precinct. That is the complete record, as far as I know, concerning Edgar Lewis.

I do not know where warrants are kept after they are issued, but I do know that there was a record of warrants issued, because the police department has to keep the records in the police headquarters.

Thereupon the book produced by the witness was exhibited to the jury and the witness pointed out to the jury the entries as to which he had testified.

No cross-examination.

Thereupon further to maintain the issues on his part joined the plaintiff called as a witness **William F. Sager** who, having been duly sworn, testified as follows:

My full name is William Fred Sager. I appear here under subpoena issued by the plaintiff. The defendant had subpoenaed me once before, but not this time. Last night I was served with a subpoena issued by the defendant. I had previously been served with one for the plaintiff. I am a retired detective of the Metropolitan Police Department. In May, 1934, I was employed in that capacity. I was assigned to No. 2 precinct on U Street, Northwest. I do know who Mr. Whip is, I know him. I knew him on May 10, 1934. I had known him for some time before that date. He used to come to headquarters all the time. I knew for whom he worked and in what capacity; he worked for the Telephone Company, the Chesapeake & Potomac Telephone Company, and, as I understand it, he was an investigator. I did talk

with him on that date concerning Edgar Lewis. I did go with him to 1401 Columbia Road. I did take Edgar Lewis from 1401 Columbia Road. Office Whip went with me and Officer Wheeler to that location. Whip is not an
37 officer, and Officer Wheeler is a precinct detective like I was. We went in an automobile, one of the scout cars from police headquarters. Mr. Wheeler, I believe, drove the car, it has been some time ago. We did have occasion later to go to the precinct with Lewis, and he was booked at the precinct. I did not have a warrant for his arrest, and I never had a warrant for his arrest. I questioned Lewis in the presence of Whip. Whip did not question Lewis in my presence that I know of. Mr. Wheeler and I both questioned Lewis. After questioning and after talking with Lewis I did not tell Whip that I did not want to arrest the man, and that I did not have sufficient information or evidence against him to arrest him. I did not say to Whip that I did not want to arrest the man. I did not tell Mr. Halpern that I only arrested Lewis on the insistence of Whip.

About two months after the arrest at No. 2 precinct I did not tell Mr. Halpern, the gentleman sitting at the trial table, that I did not want to arrest Lewis, that I only arrested him upon the insistence of Whip. I made no such statement. I did not make such a statement at No. 2 precinct about a month after the arrest of Lewis. I did not say to Mr. Halpern when he was investigating or inquiring about the arrest of Lewis, that I did not want to arrest him because I did not have enough evidence against him, and that I told Whip that I only arrested him because of the insistence of Whip, and I did not also request that Whip get a warrant for him and Whip refused to do so.

Thereupon counsel for the plaintiff claimed the right to cross-examine the witness on account of surprise, and the examination of the witness proceeded as follows:

38 I did not also tell Mr. Halpern that Whip drove me down in his own car, his own automobile, to get this man. I did not tell Mr. Halpern that I did not take any precinct or squad car to take him up. I did not take any orders from Mr. Whip whatsoever. I got the information about Lewis from the assignment I had made out at police headquarters that he had stolen an overcoat. On the informa-

tion at headquarters there was no information as to this man having stolen an overcoat, but just an assignment handed to me like this, made out by somebody from the Telephone Company. I went to 1401 Columbia Road with Whip because I had this and his name was on there. We sent for Mr. Whip to come over to the station house and identify Lewis, and we took Whip along with us so that we would get the right man. By that I mean Mr. Wheeler and I. I say that I was given the assignment. I was given the assignment, a yellow assignment, and on that it had the stolen overcoat; that was over the telephone, that is what I told you, that is what I got. As a result of getting that I went there with Whip. He came up to No. 2 and we went to 14th Street and Columbia Road where we placed this man under arrest. We went there by automobile. I do not know how Whip came up to the station. I did not see him come up there. I was inside waiting for him. I do not know that he did go to the station in an automobile. I was inside of the station, and I could not see through a brick wall. I don't know. I believe he had an automobile. It did not take him very long to get up there when we sent for him. I was at police headquarters that same night when Lewis was brought down there. I do not remember that Whip
39 was there that night. When Lewis got out of the elevator it was this other police officer that was with me. As to whether Whip was with me, I may have met Whip, because when I go to headquarters we first go into the main office and get our assignment to different precincts. I do not say I didn't see Whip, because I always saw him every night, I saw him when I was working before I was retired. I do not deny not seeing him. I do not say he was not there that night, and I don't know whether he was there or not. I did not hear any other officer say to Whip in the presence of Lewis, "What have you got him for, picking telephone boxes?", and I did not hear Whip reply, "No, not that." I did not hear that. I was not in the room when Lewis' finger prints were taken. I was in the other room. They have a man there for that. I was not with him when he was photographed. I did not question him in there at headquarters. We waited until he came up the line. By that I mean we have a big screen up, and we sit behind the

screen to identify any of the other prisoners that they want or anybody that is wanted, down through the line, for anything he had stolen. There were probably 60 or 70 men down there. It was a year ago, and there may have been 90 or 100. They were not there in connection with the Lewis case. There were men there that we had to bring down there the same as Lewis. I did not have any information concerning Lewis, not besides Whip. I did not talk to anyone that night at headquarters concerning Lewis. I had talked to Whip beforehand. I did go to the R Street Exchange with Whip. As to what happened when I went there

40 with Lewis, Whip and Mr. Wheeler and myself and this Lewis were in the car and we brought him up there to see if someone could identify him, and I believe at the time the fellow was not there and we brought him back to the station house again. I could not tell you that two colored men named White and Young were brought out. I do not know what their names were. I was sitting in the car and was looking out and the man that was to be there to identify him was not there at the time, and no one showed up to identify him, I know that. We locked Lewis up for investigation. At the R Street Exchange, I don't know whether Whip got out of the automobile, leaving me in it with Lewis, and went in the Exchange and brought the two men out who appeared alongside of the car, and asked those men to identify Lewis. I do know there were three or four men looking at that man. That was in the parking lot. They were in the parking lot. They looked at him, and I don't know whether they identified him. I do not know whether his name was White, or Blue, or what. I did not say that it was my first recollection that the man who was going to try to identify him was not there when we called. I did not say that a moment ago. You try to make me say that. I do not know those men, who they were. I said, and I told you, that he was to take Lewis down there to see if they could identify him but I could not tell you who those men were, but there were four or five colored men. That is the only answer I can make.

A moment ago I did not say that the man who was going to identify him was not there. I just said what I said a little while ago, that there were four men looked at him,

and I do not know what their names were. That is
41 what I said, and that is what I stick to. I did not say
anything like that the man not being there that I
wanted to identify him. No one at all identified Lewis at
headquarters that night. That is why I brought him down
there.

As to what information was furnished me, where did it
come from, and who directed my actions, I could not tell
you that. All I know is the assignment was made out that
he had stolen a coat from the telephone building. That is
all I can say. This assignment is available at headquarters.
This happened in 1934. I guess it is available now. I am
retired now. I turned that assignment back when I got
through with the case. I never made any comments on the
assignment. What entries I made on the assignment at
that time is all put on there. It is three or four years ago.
I did not make any entries as to why I authorized his re-
lease. Mr. Wheeler and I both did authorize his release. I
did not tell Mr. Halpern that I was not holding him con-
cerning the emigration authorities. I did not tell Mr. Hal-
pern that Lewis had acted smart with me, and that is the
reason I held him. I did not tell any such thing. It is just
the same as you came to my house one night and you had no
business there, and you said, "All I want you to say is that
Whip over the telephone wanted to arrest this man", and
I told you I did not want to talk to you. As to whether it
is a fact that I did not ask you (Mr. Wood) to take me up
to the prize fight, I told you I was in a hurry. I did not ask
you to take me up to the prize fight that night. I will tell
you in a minute what you asked me. I did not ask you if
you had an automobile. When you came in the house
42 I asked you what you wanted there, and this gentle-
man (Mr. Halpern) here. I did not know you. I
told you I expected to go to the fight, and had no car,
and you said "I will take you up to the fight." I said, "All
right, what do you want?" You said, "I want to know
about Edgar Lewis of the Telephone Company, and I want
you to say one thing; on the way out to the fight, you
stopped there at the baseball park, and I told you it was
up at 14th and W, and you said, "All I want you to say is
Whip asked you to arrest this man". That is exactly what

you said, and I told you all I had to say I would say in court, and got out of your car.

I did not make any statement to Mr. Halpern that I had been there so many times in court. I think I said I would stand on my constitutional rights. I was called up by the telephone, and I said several times I would be down. Day before yesterday at 10 o'clock I was here, and Mr. Sullivan said come back at 12.30, and I went back at 12.30 and he excused me. I am supposed to go to the doctor's around 12 o'clock every day. As to whether I asked you (Mr. Wood), when you called at my home, if you had an automobile, I did at the time because I knew you came up there at 20 minutes to 8 and came into my house. I did ask you whether you had a car, because I was in a great hurry to get up to the prize fight, and did not want to be bothered with you. Mr. Wood did ask me if I would be good enough to stay and talk with him and Mr. Halpern for a few minutes, and Mr. Wood would take me up to the fight. I said I wanted to go and that I was late. I said I wanted you to get out of my house. That is my house and you had no right to enter it.

43 As to whether I wanted you to get out of my house and yet drove with you to the fight, it was because I was in a hurry and I thought it was right you should take me up there when you made me late. So I thought I ought to do it, and I told you you could take me up to the fight, and you took me to the wrong place after I directed you right. After I wanted to put you out of my house I rode up with you to the fight. You had no business in there.

I did not tell Mr. Halpern that I did not want to arrest Lewis, that I did not like Whip, that he had got me in a jam in another case. I never told you any such thing in my life. Whip never got me in a jam and I did not have any jam. I did not also tell Mr. Halpern that Wheeler knew Whip much better than I did, and that if they wanted Wheeler to make an arrest they might get it. At the precinct two months after the arrest was made I did talk with Mr. Halpern. At that time I did not tell Mr. Halpern that Wheeler knew Whip better than I did and that because he did and wanted to make an arrest, that Whip told him he wanted an arrest made, and that I went ahead and made it. I cannot remember how long I talked with Mr. Halpern on that occasion. I do not know how long it was. I couldn't

tell you. It may have been 20 minutes or half an hour. It may have been as long as an hour. I did not tell Mr. Halpern on that same occasion at the precinct, a month after Lewis' arrest occurred, that I did not want to make the arrest but Whip took me over in his own car and insisted that it be made. I absolutely did not make that statement. It is customary sometimes to make return in cases when you make arrests; that is in some cases.

44 I was on the police force for about 16 years prior to May 10, 1934. In the talk I had with Mr. Halpern at the precinct two months after this arrest I do not remember saying that I had a conversation with Officer Wheeler when he returned. I did not tell Mr. Halpern that Wheeler knew more about the case than I did. Wheeler did not know more about the case than I did. We both knew about the same. I did not on the same occasion tell Mr. Halpern that Whip was continually running down to the police department concerning missing articles, articles missing in the various exchanges of the Telephone Company. I absolutely did not make that statement. I am friendly with Whip and with you, but I was never friendly with any lawyers when they asked me about these things. I did not say I do not like lawyers. I am not fond of them either. It may be betwixt and between.

When Mr. Halpern called at my home about two and a half months ago I did not even know his name. Mr. Halpern is the same gentleman who came to my house and is the same gentleman who talked to me at the precinct about a month after the arrest, but I did not know his name. He is the same gentleman who called with Mr. Wood at my home about two and a half months ago. On the occasion when Mr. Halpern called at my home with Mr. Wood I did not tell Mr. Wood and Mr. Halpern in the front room of my home that I did not want to make the arrest and that I made it only on the insistence of Whip. I absolutely did not say that. I do not remember whether Mr. Wood asked me that question. He asked me so many questions that I do not remember that. I do not remember whether Mr. Wood asked me that question. He asked me so many different questions in the house and at the house. My wife was sitting
45 in the front room. When Mr. Halpern and Mr. Wood started to ask me questions in my home I said, "Mr.

Wood, I would rather not discuss this matter, and I will tell you what I am going to when I get to court." I have been bothered by this case several times. On the way to the fight when Mr. Wood took me up there I said to him, "Mr. Wood, I will tell you what I know in court, and I will not discuss this matter anywhere else other than that." That is what I said. As to whether when Mr. Wood and Mr. Halpern called at my home that night I did not tell them at first that I didn't want to talk to them, I didn't know who they were at first. They had no right to come there, and if I had suspicioned it I would not have let them in there. When they came in the hallway I decided to let them in. When they pushed their way in across the hall I should have stopped them from coming in. I do not remember whether I went to the door that night or whether my wife went. As to whether Mr. Wood forced his way in there, I knew they were very much in there when I got there. I could not tell you whether I went to the door or whether my wife did. I do not know which one of us came to the door. I think she opened the door and let you in, which I would not have let you in. Mr. Wood and Mr. Halpern came right in the front room. At first I did not know what they were after. They told me what they wanted. They wanted me to say, and I would not say; and you (Mr. Wood) asked me to say in the house and on the way to the fight, and asked me to say that, and I said that all I had to say I would say in court. I did not say that I did not want to make the arrest, and I only made it because Whip insisted on my making it.

46 I did not say that. I do not know what you (Mr. Wood) said. I do not remember all you said. You said so much I cannot remember every word, word for word, but I do remember you saying didn't Whip want this man arrested, and I said that what I had to say I would say in court, and I would say no more. That is what I said.

As to what records, if any, are kept at headquarters, or were kept in this case, I do not know of any that was kept there; just outside of the assignment that was made of the case. I do not know that I said to Mr. Halpern that certain little cards were kept at headquarters of this case that showed Mr. Whip was the one that furnished that information. I do not remember that. I did not tell Mr. Halpern

that. I did talk to Mr. Hoover about this case. As a matter of fact I did talk to him a couple of months ago when the case was set on one occasion, when I came down to the assignment commissioner's office. I do not know how long I talked to him up there, but it was about five or ten minutes.

I cannot say that I talked to him about 20 or 30 minutes upstairs that day, but I can say this, that I did not talk to him as long as I talked to you. I cannot remember how long I talked to him there, but I did not talk to Mr. Hoover as long as I did to you (Mr. Wood). I do not know how long I talked to you (Mr. Wood). I didn't put that down. At the time I was talking to Mr. Hoover upstairs in the assignment commissioner's office there were several men around there, some faces that I knew and some that I didn't. Officer Wheeler was there. He was there when I talked to Mr. Hoover. Officer Wheeler is still connected with the police department, and he was there. I could not tell

47 you that there were also present two colored men standing near the place where I was talking to Mr. Hoover. I do not say that they were and I do not say that they were not.

I am not familiar with the records kept at police headquarters. I have been retired for over three years, and I do not know what they do down there. I do not go there, and I do not know what they do there. I was familiar with them on May 10, 1934, with the records that were kept about cases. Aside from the assignment cards I do not know of any daily account of the case being recorded. Upon investigating this case I did not make any notes of anything in headquarters or in the precinct concerning this case.

Thereupon two assignment cards produced from the files of the Metropolitan Police Department were handed to the witness, which were marked Plaintiff's Exhibit Nos. 1 and 2, respectively, for identification, and the witness testified that he had something to do with the assignment marked Exhibit No. 1 and that Mr. Wheeler had the assignment marked Exhibit No. 2.

Cross Examination

Thereupon on cross-examination the witness further testified:

Thereupon the witness was handed the assignment card marked Plaintiff's Exhibit No. 1 for identification, and after examining it testified: That is the paper I referred to when I mentioned an assignment card here. That is what I meant, and by that I meant that I was assigned on the matter which is shown on this paper, and that related to
48 an overcoat that had been taken from the telephone building at 14th and R Streets, Northwest, about May 1, 1934. I knew Officer Wheeler who was also a detective in the police department. I knew of my own knowledge that he was assigned to investigate another case where property had been lost or stolen. I knew that. I knew that that case related to a watch and chain which had been taken from the clothing of a painter in the Columbia Telephone Exchange building on Columbia Road about the 30th of April, 1934. And in connection with my investigation Mr. Wheeler and I worked together.

Coming down to the 10th day of May, 1934, I do recall that Mr. Whip and another man employed by the Chesapeake & Potomac Telephone Company, whose name is Renninger, came to No. 2 precinct on U Street, and that there they saw me and Mr. Wheeler. I do not know this other man's name as well as I do Mr. Whip, but they were there. I do know Mr. Whip. Mr. Whip and this other man came there, and they did go with me and Mr. Wheeler to a certain address on Florida Avenue between 13th and 14th streets. We went in a police scout car. I am pretty sure Mr. Wheeler drove the car. Mr. Whip did not drive the car, not as I know of. We went to the address on Florida Avenue between 13th and 14th, and we inquired for Edgar Lewis. When we got to this place on Florida Avenue Mr. Wheeler and I got out and went into the house and talked to Lewis' wife, I suppose it was his wife, a lady there, and she told us where he was working on Columbia Road in an apartment. I recall that Mr. Wheeler and I went to this house and made inquiry, and were told that Lewis was working at an apartment house at 14th and Columbia Road. Whip and
49 this other man remained in the car, in the back seat.

After making inquiry at the house, Mr. Wheeler and I returned to the car, and Mr. Wheeler drove the car from that point down to a point on 14th Street near Columbia

Road. After Mr. Wheeler and I came out of this house on Florida Avenue we got back in the car and Mr. Wheeler drove the car out on 14th Street near Columbia Road. When we got to 14th Street near Columbia Road Wheeler and I got out of the car and Whip and the other man stayed in the car. Wheeler and I went into this apartment and asked this manager of the apartment—I do not recall her name; it has been too long ago—if a colored man worked there by the name of Edgar Lewis, and she said “Yes”; and she said, “There he is”. We found Lewis there, and we spoke to him. I told him he was under arrest, and took him to No. 2 precinct. We took him to the car and to No. 2 police. As to whether Whip was then in the car, I am not very sure of this, because I have not seen the man during the last three years. When we went back to the car I am pretty sure that Mr. Wheeler drove it. From there we went to No. 2 precinct. Lewis sat in the back seat with me. When we got to No. 2 precinct we put him before the rail, and the police sergeant—I don’t know who he was; and then he entered his name in the book and marked it to Mr. Wheeler and I as investigators. The book which has been brought from No. 2 precinct and put in evidence is the kind of book that I refer to. Lewis was then questioned. We took him up to the rear room assigned for the detectives’ room. By “we” I mean Mr. Wheeler and I. We talked to him for quite a while, and he denied it. Wheeler and I talked to him. Those present were Mr. Wheeler
50 and I. Whip was not there. We were in a room on the second floor in the rear part of No. 2 precinct. We call that room the detective squad room, and we talked to Lewis in there. Whip and Renninger were not in there. Wheeler and I talked to Lewis. I could not tell how long we were there on that occasion. It may have been an hour or two hours. Then we took him in a car and took him to the Telephone Company at 14th and R Streets. While we were at the station house before we went to 14th and R Streets, Whip did not in my hearing and presence accuse this man Lewis of stealing either the overcoat or the watch. He absolutely did not. At the time that we took this man Lewis into custody we did not do that under directions of Mr. Whip. Mr. Whip did not ask or suggest to me that we

arrest this man. He never did that. I arrested him because of the fact that I was performing my duties as a policeman, and in the line of duty. At the time I made this arrest I made it of my own volition and in the exercise of my duties and in the performance of my duties as a policeman.

After we talked to Lewis at the station house we went to the vicinity of 14th and R Streets. I am not sure that Whip was with us. I would not like to say. Mr. Wheeler did go, and he drove the car. When we got there we saw three or four colored fellows standing in a parking lot there. We were not looking for a colored man that they called Shorty, not as I know of. I do not remember that. I do not know that Mr. Whip got out of the car in the alley back of the telephone building and brought out some colored men. I don't remember that. I didn't see Whip get out of the car

51 and go back and bring out some colored men to the car where Lewis was. After we left the telephone

building at 14th and R Streets we took Lewis back to the station house. After that I next saw Lewis that night at the police line-up at police headquarters. At police headquarters a report was made of this. That was about a quarter of six. It was about in the neighborhood of 6 o'clock. I saw Mr. Whip that evening at police headquarters. At police headquarters Mr. Whip did not say anything about holding this man or keeping him in custody. I have seen Mr. Whip around headquarters quite a few times. We brought the men down to police headquarters and went through the process of a line-up. Mr. Whip was not in the room at the time those men were in the line-up. He was not allowed in there. Nobody is allowed in there but the police detectives and policemen. In there we took them through the routine of finger printing and photographing and exhibiting Lewis and the other fellows to the other policemen and to the detectives, and then took him back to the station house. After we held Lewis, I think it was 24 hours, and we decided to let him go, we got some information—where the information came from I don't know—that he was a British subject here without having his rights; and so I immediately got in touch with the emigration officers and they said they would come up and see about it. We said we would turn the case over to them if they found

out anything about him, and we would turn him over to the emigration officers. I couldn't tell you when he was released. The records show that he was released at 11.30 on May 11th, and that is in accord with my recollection. I did not make this arrest on the direction or on the suggestion or persuasion of any of the officials of the Telephone Company. They absolutely did not speak to me anything about him. The only one I spoke to about the case was Mr. Whip, and Mr. Whip did not direct me and we did not take any orders from anybody but Inspector Burke at the time.

Re-direct Examination

On redirect examination the witness further testified: I talked to Mr. Whip about the case, but he did not tell me anything. I do not remember when I talked to him. He did tell me what day the things were stolen, and the day and date is on the assignment, what date it was stolen. That is right on the assignment there. I believe Whip did tell me that Lewis had previously worked for the Telephone Company. Whip did not tell me that he thought that Lewis was the man who stole both of these articles. He didn't say that.

I said a moment ago that no one except the police officers and the detectives are allowed in the line-up. It is not a fact that I have even taken witnesses down there to identify persons in the line-up. They don't even let lawyers in there until after the line-up is over. Then you can go in there and identify anybody. They will even let lawyers in under those conditions, but not while the men are being questioned. That is during the line-up. That is not when the photographs are taken. They are taken before he comes in there. It is all done before he comes in there. I could not tell you why Mr. Whip was at headquarters that night. I didn't ask him to come there. I saw him there several times before this. No warrant was ever issued for Lewis at any time, so far as I know. At police headquarters Whip never spoke to me, except he said, "Did you bring Lewis down here", and I said, "Yes, he is in there", and that is all he said. Nothing more. What Whip talked about at police headquarters I could not tell you. I don't

know what he was talking about. As to whether I am quite sure that I went to the precinct first after having taken Lewis out of the apartment house, I don't know whether I did or not. I could not remember that. I don't remember about taking him over to Sam's on 14th street. I don't know anything about Sam's. I know where the Lucky Strike bowling alley is, but I could not say there is a place called Sam's there. Of my personal knowledge we did not take Lewis in an automobile with Whip and these other men to a location across from the Lucky Strike bowling alley. We did not do that, to my personal knowledge. I am sure that we went first to the precinct and then from the precinct to the R Street location. When we got to the R Street location these men were on the parking lot, standing still, looking in our direction. I think the parking lot had cinders on it. I could not tell what the men were doing. I don't know that Whip said anything to them. I could not tell you anything about that. We stopped there. I could not tell you how long we stopped there. It may have been five minutes; it may have been six and a half or it may have been seven minutes. Nothing was said or done while we were stopped there. I do not know why we went over there. We just went over there. It was not because Whip told us to go there. Whip did not tell me to go there. I do not know why we went there, but Whip didn't tell me to go over there, either. I do know why we went back to the precinct after we got there. It was to put Lewis in. Whip

54 was still with us. He got out of the automobile and went into the station house. He didn't go up to the sergeant's room with me. I was ordered to book him by the police. I don't remember that I went up to the sergeant's room just before I booked Lewis. They are always booked first before they are searched. I say that is the first time we took him there; we took him out to 14th and R Streets and brought him back, and you always book a man when you take him to the station house. When we took him to the station house on the first occasion we took him up to the sergeant's room first. We did not take him to the sergeant's room first before we booked him. We booked him first. We always book him first. When we took him to the precinct first we did not go to the sergeant's room,

but took him right to the desk and booked him. I cannot say that Whip was standing right there when we booked him. I cannot say that, because I do not remember. We left Lewis and presently we came back again. I do not remember if I went up to the sergeant's room. I do not remember the facts clearly in this case. It has been a long time and I have been sick a lot since I have been out, and I don't remember lots of things. My memory could not be incorrect when I said a while ago that Whip did not drive the automobile. He didn't. I could not be wrong in my memory when I said this automobile was a squad automobile. When we returned to the precinct the second time I do not remember whether Whip did go up to the squad room with me. He didn't go in the squad room with me in the presence of Lewis that I know of.

I did not say in answer to a question of Mr. Hoover that Whip did go into the squad room. Whip did not ever ask Lewis about the watch and overcoat in my presence.

55 At the time we apprehended Lewis, Lewis was not ever in the presence of Whip alone outside of my presence that I know of. I could not say that Lewis was constantly with me until I actually placed him in the cell. I went on out there, and he didn't ask Lewis then in my presence. From the time I arrested Lewis at the apartment house until the time we actually put him in the cell after we had been over to the R Street Exchange, I had never left him until I left him in the station house in the care of the station keeper, until that night when I went to the roll call.

We took Lewis to the squad room upon the first occasion when we brought him to the precinct. Whip did not go to the squad room with me. We arrested Lewis at the apartment house on Columbia Road, brought him to the precinct the first time, and then took him to the squad room, and then we left the precinct and went to the R Street Exchange.

I could not say that Whip went to the R Street Exchange. Then we returned from the R Street Exchange. Lewis was in my presence constantly from the time we arrested him until we returned from the R Street Exchange. I cannot say that at the station Lewis was in Whip's presence alone. Lewis was booked, and when I left I went home and I do not know what happened then. In my presence Whip did

not talk to Lewis. Lewis was not in my presence all the time. If Lewis did talk to Whip during the period I have just described I would indeed have heard it. As to how long Whip spent in the squad room with me, I could not tell you how long.

56 I could not tell you what kind of a car it was that we used. Sometimes there is a record kept of the cars and sometimes there is not. I could not tell you where Officer Wheeler was connected at that time, whether at the precinct or headquarters. We worked out of headquarters. I couldn't tell you that. You will have to ask him that. I don't remember now what kind of a car it was. It was a four passenger car, but I could not tell you how many doors it had. It was a police car, but it did not have "Police Car" marked on it. It was sent from headquarters to No. 2 to work out, but didn't have "Police" on it, but it was an official police car. I don't remember the number of doors on the car. I don't know how many doors it had. By "scout car" I mean it was a car assigned to headquarters. I could not tell you how it got to No. 2 that day. We were going out to see if we could locate Lewis that morning. I didn't call for the car and request it. The case was originally brought to my attention when I got the assignment from police headquarters. As to where I was when that happened, whether at the precinct or at headquarters, let me see, well, we have to go down to headquarters in the morning at 9 o'clock, and I looked in my box and saw the assignment in there. That was the first I knew of it. I recall that the car was a touring car. I don't know whether the doors were locked when we got into it. Wheeler went out and got in the car first. I didn't get the keys to run the car. Wheeler had the keys. He drove the car. I said to Wheeler "Let's go over and investigate this case". That is exactly what I said to him. Whip was not in the precinct at that time. I don't know which one of us it was that called Whip.

57 Thereupon further to maintain the issues on his part joined, the plaintiff called as a witness **Preston C. Wheeler** who, having been duly sworn, testified as follows:

I am connected with the Metropolitan Police Department as precinct detective at No. 4 precinct now. I was connected with the Police Department on May 10, 1934. I was a precinct detective attached to the clothing and jewelry squad at headquarters. There is a precinct that is now known as No. 2 but used to be No. 8. The one now referred to as No. 2 used to be the old No. 8. In May, 1934, I was not connected with old No. 8. The squad at headquarters that I was assigned to had two automobiles assigned to that squad. I had the keys to one of those cars, I do not remember which one it was. The cars were both Chevrolet sedans. I don't remember whether they were four door or two door cars. As well as I can recollect, it was four-door. I am sure that it was a sedan. I am quite positive it was not a touring car.

Thereupon the witness was handed the two assignment cards which were marked Plaintiff's Exhibits 1 and 2, respectively, for identification, and asked to state what they were, and answered: They are assignment—the regular assignment cards or slips that we get at Headquarters for assignments. As to whether there is another record at headquarters about the history of cases made by the witness and precinct detectives, the only records that I know of are the index files there. Every person that makes a complaint, their name and address and telephone number, or any other information that might be useful, is recorded in an index file, a regular index file system. That is not available to me. I was asked on Tuesday to look up any

58 other records, and I did try to obtain them, but I was unsuccessful the day I was asked. As to whether in this particular case of Edgar Lewis I have looked up that case in the index file that I have just spoken about, as far as I know there is not any index for Edgar Lewis in the Police Department. I did not look it up to see. When I testified a moment ago that complaints were made at headquarters, the names and so forth are put in that index record. I refer to larceny complaints. The theft of an overcoat or watch is usually classified as a larceny complaint. I did not look in the index record to see if there were any more records in the Lewis case, because Lewis never reported anything stolen. Since requested by counsel the other day I have not looked

for any index file relating to Lewis. Counsel can request that information from the Inspector at the Bureau.

I suppose these two cards I brought were in response to the subpoena duces tecum served upon the Police Department. The inspector in charge at the Bureau gave us these two to bring down. I did not have any copy of the subpoena served on the department. I have never seen it. I was given these two additional records at noontime. There is another record kept in headquarters which is called an index record, and on that is the name of the complainant and the report of what is stolen. I do not know of my own knowledge that there is any such record in the Lewis case. I know this, that they do keep an index file record of all cases. I have not looked at the index files.

Thereupon counsel for the plaintiff introduced in
59 evidence the two assignment cards which had been previously marked Plaintiff's Exhibits Nos. 1 and 2 for identification, and said cards were thereupon marked as Plaintiff's Exhibits Nos. 1 and 2 and received in evidence.

Whereupon the witness resuming testified: On May 10 I did go to No. 2 precinct in connection with the Lewis case. I do know a man by the name of Whip. I knew that he worked for the Chesapeake & Potomac Telephone Company. Whip was at No. 2 precinct when I got there on that day. I made an appointment with Whip the night before, as well as I can recollect, to meet him at No. 2 precinct the next morning.

When I was on the stand on Friday last I testified that there was a card index system that is used at headquarters. I have not made any further effort to find any additional records. I was subpoenaed by the plaintiff in this case. I do not recall that I was also subpoenaed by the defendant. I was given these records, these two records here, these two assignments here (Exhibits 1 and 2), and the Arrest Book, by Captain Keck, of the Detective Bureau, to bring them here, and he told me at that time, he said, "These records are in your charge until the case is completed."

Thereupon the attention of the witness was called to the assignment card marked Plaintiff's Exhibit No. 2, which is the one which refers to the theft of the watch, and witness testified that Plaintiff's Exhibit No. 2 deals with the

question of the theft of the watch. Witness read an entry on the back of the assignment card under date of May 2, 1934, "Talked to Mr. Whip. Unable to see the complainant on account of out of town address. Obtained description from Insp." That means Inspector's office.

60 Witness continued reading entry: "Am checking second-hand reports. Efforts cont.—Wheeler."

Witness testified: That entry is not in my handwriting. We have a file clerk that has charge of these assignments, an assignment clerk. I made out a report on my activities on this particular case, and he entered it on the back. He did that. The file clerk makes these entries here on information furnished by me, from a copy furnished by me. Aside from this entry I do not recall that it was on that day I talked to Mr. Whip. It may have been the day before or the evening before. It was about this case. That is the Mr. Whip who was connected with the Telephone Company.

There is also an entry "5/10/34; interviewed complainant. Unable to furnish any other description. Edward T. Lewis arrested. Witnesses failed to identify. Efforts cont."

Witness testified: The entry "cont." means "continued—Wheeler." That was entered from information given to this clerk by me. That is what is termed the progress report for a given case. Between these two dates May 2, 1934, and May 10, 1934, entered on the back of this card, I did talk with persons about this case. As far as I can recollect, there was several persons interviewed. This assignment card, Plaintiff's Exhibit No. 1, deals with the theft of a top coat, and that case was being investigated by Officer Sager.

Thereupon Plaintiff's Exhibit No. 1 was read to the jury, and is in words and figures as follows:

"Detective Bureau, Metropolitan Police, D. C. Classification, Petit Larceny.

61 "Name of complainant, Harrington, Herbert. Address of complainant, Apt. 305, 1910 Kalorama Rd., N. W. Where original report was made, DB-Harris T #8493. Officer assigned, Sager #2. Date and time to Headquarters, May 1, 1934. 11:45 A. M. Class of property and value, Topcoat etc., value \$35.00.

“STATEMENT OF FACTS. Reports stolen from the North Exchange, 14th and R Sts., N. W., this A. M. a brown tweed topcoat size 35 ‘Society Brand & Hecht Co’ on label, raglan shoulders, half belt in back. 1 pr. pig skin gloves, Kaywoodie pipe, oilskin tobacco pouch and black leather key case and keys in pockets. Total val. \$35.00.

“Reported by Raymond C. Whipp, C & P Tel. Co.”

On the reverse side of the card appears the following:

“REPORT OF OFFICER AS TO ACTIVITIES IN CASE.

“Note.—Make accurate entry of action taken, including expenses incurred, visits to and correspondence with other cities; enter arrests made and property recovered.

“5-3-34—interviewed compl, no suspects, efforts cont.—Sager.”

And thereupon Plaintiff’s Exhibit No. 2 was read to the jury and is in words and figures as follows:

“Detective Bureau, Metropolitan Police, D. C. Classification, Grand Larceny.

“Name of complainant, Carter, R. J. Address of complainant, Sligo Mill Road, Takoma Park, Md. Where original report made, LT. Johnson, D. B. T-8435.

“STATEMENT OF FACTS. reports stolen April 29, 1934, about 11 A. M. from vest pocket in basement of 62 Columbia Phone Exchange 14th and Columbia Rd., N. W., a gents yellow gold open face 21 jeweled Hamilton Watch has an 18 K. Gold (yellow) attached the link of chain designed after anchor chain each link being stamped 18 k. Value \$100.00

“Reported by Raymond C. Whipp, Chief Investigator, C P T Company.”

On the reverse side of the card appears the following printing and typewritten notation:

“REPORT OF OFFICER AS TO ACTIVITIES IN CASE.

“Note—Make accurate entry of action taken, including expense incurred, visits to and correspondence with other cities; enter arrests made and property recovered.

“5-2-34—talked to Mr. Whipp unable to see the compl on account out town address obtained descriptions and furnished the pawn insp with same, am checking second hand reports, efforts cont—Wheeler.

"5-10-34—interviewed compl, unable to furnish any further description, Edgar T. Lewis, Col, arrested, witnesses failed to identify, efforts cont—Wheeler."

Cross Examination

Thereupon on cross-examination the witness testified as follows: On my direct examination I testified that I saw Mr. Whip at the second precinct station on May 10, 1934. I also testified that I called him up the night before that and made an appointment to meet him at the station house. I did drive one of the police cars up to the second precinct station, and from the station I went to a number on Florida Avenue between 13th and 14th. Sager, Whip and Ren-
63 ninger, as well as I can recall, went with me. I drove the car when we went to the home of Lewis on Florida Avenue on May 10, 1934. It was a police car. When we got there Sager and I got out of the car and went up to this house and rang the bell. A colored woman came to the door and I asked for Lewis. She said he was at work. I asked where he worked, and she said at an apartment house at 1401 Columbia Road. After we got certain information from this person we interviewed on Florida Avenue, we got back into the car. At that time Whip was in the car in the back seat. He didn't get out of the car. From that point we went to 14th Street near Columbia Road and parked. I drove the car. And when we got to that point we stopped the car on 14th Street. I got out of the car and Sager was with me. We went to this apartment house at 1401 Columbia Road. I left Mr. Whip in the car. I went to the apartment house and saw Lewis. At first I interviewed the resident manager, and after interviewing the resident manager I arrested Lewis. At the time I arrested him I don't think I told him anything. We did tell him that we were police officers. I did exhibit my badge to him, and Sager and I were there together. Whip was not with us. As well as I can recollect, we took Lewis to No. 2 precinct. We went back to the car, and when we got back to the car Whip was in it, and then we went to No. 2 precinct. That is on U Street between 9th and 10th Streets. And when we got there, well, we took the man into the station and had him booked. I am not certain, but

I think that we talked with him in the station before going back to the Columbia Exchange.

Thereupon the attention of the witness was called to the testimony of the witness Hartung, and there was
64 read to him the entries in the police record book, and witness testified that that accords with his recollection of what he called the bookings.

After Lewis was booked we talked to him. He was interviewed. Sager and I talked to him. As well as I can recall Whip and Renninger were there. I think Whip was there. That was in the squad room at No. 2 precinct. I do not recall now what really was said to Lewis. I do remember some of the questions that were asked him. I asked him if he was in the Columbia Exchange on a certain date, and as well as I can recollect he was asked whether he was in the North Exchange on a certain date. I do not remember Whip saying anything to him. From there I believe we first went to the Columbia Exchange. I am not certain. We did go to the North Exchange, which is at 14th and R Streets, but I don't recall whether we went to the North Exchange first or the Columbia Exchange. I am sure we went to the Columbia Exchange, and we did go to the North Exchange. At the North Exchange there was an attendant on the parking lot known as Shorty. Shorty was interviewed. By the parking lot I mean the lot on which second hand cars were stored. I think Cherner uses it now, but I do not recollect whether he used it at that time. But it was a parking lot where they had automobiles stored.

I went to the attendant had this attendant on this parking lot look at the defendant Lewis, to see if he could identify him as the man he saw coming out of the North Exchange with an overcoat on his arm. This attendant after looking at him said he resembled the man very much in every respect, but he would be unable to testify positively in
65 court that he was the man. We did take Lewis back to the station after that. I interviewed several persons in the Columbia Exchange. As well as I can recollect I interviewed one white man and two colored men. After that we did go back to the station, and this man Lewis was locked up. I went down to the lineup at headquarters that night and Lewis was brought down there. I do not recall

whether Whip was there that night or not. Lewis was released the next day. I had the assignment which covered the theft of the watch and chain, and Sager had the assignment which covered the theft of the coat, and we were working together, and had been from the time it was reported until we made the arrest on May 10. Mr. Whip did not at any time suggest or request or direct that I arrest Lewis. No official of the Telephone Company ever made any such request that Lewis be arrested. At the time I made the arrest of Lewis I made it in the performance of my duties as a police officer and on my own volition.

Redirect Examination

As to where I got the name of Edgar Lewis, as well as I can recollect it was from one of the men that I interviewed in the Columbia Exchange. I am quite sure that I did not get it from Whip. Whip did tell me something about Lewis. As to what he did tell me, after interviewing several men in the Columbia Exchange, whether they saw Lewis in there on this date. I called Mr. Whip and asked him if he knew Lewis, and he said "Yes"; said Lewis was formerly a janitor, as well as I recollect, for the Telephone Company. And I said, "Well, I don't know the man." That was why

66 I made an appointment that morning of the arrest for Whip to meet me at No. 2, so he could identify Lewis. Whip did not go into the apartment house with us. He stayed out in the car and was seated on the rear seat. I brought Lewis out to the car. I found a man in there by the name of Lewis.

Before that morning I had Lewis' home address. As to why I did not go there myself, it is not customary always for a police officer to make an arrest by himself. It is always best for him to take someone with him. I didn't go without Whip because I needed Whip to identify Lewis. I didn't lock Lewis up because Whip told me who he was. That is not why I went into the apartment house. After I found out at his home where he worked, I went from his home to his place of employment and then when I went in and saw the manager she told me what his name was. I arrested him right then and there and brought him out. I do not think it could be possible that we went down to a place across from the Lucky Strike bowling alley on 14th

Street and first stopped there. I am positive I went to the precinct first from the apartment. I possibly did go to a second hand clothing store called "Sam's", across from the Lucky Strike bowling alley, but I do not remember. It is possible I went there on that day. We did go to the North Exchange on R Street. I do not know whose parking lot it was. I do not remember the names of these men who were there that looked at Lewis. I think Lewis stayed in the car. I believe I did get out of the car. I do not believe that Whip got out. I did talk to these men. As well as I can recollect, this attendant on this parking lot, Shorty—I never did know his name—was interviewed part of the time in the presence of Lewis, and possibly Mr. Whip
67 asked him some questions too. I do not recall while we were there at that location of Mr. Whip getting out and going into one of the North Exchange buildings. It is possible that he did go into the Exchange. It is possible also he might have brought two men out with him when he went in. I do not recall that one of these men who stood alongside the car saying to Lewis, "What is wrong? What is the trouble?", and Lewis answering that he did not know. I did state that one of these men—Shorty—stated that Lewis resembled a man he had seen in the Exchange, but that he would not go to court and testify that he was the man. It was Shorty who said that. That was the attendant on the parking lot, the man they called Shorty. I never did learn his last name. I could not say absolutely whether it was White or Young. I made notes of it, I believe. I believe I did make a notation of the names at the time, but they weren't kept, and I don't remember his name at all. I did make an entry on the card after that incident there. As to how close the parking lot is to the door of the telephone exchange building in that alley, I don't know. I don't remember whether I ever saw the parking lot before or since. As well as I recollect, it seems to me like there was an entrance near the parking lot into the North Exchange. I do not remember whether Whip sat in the car or whether he got out of the automobile when I was asking these men questions. He could have been either sitting in the car or inside of the Exchange. When we did leave there I was driving the car, but I do not recall where Whip was sitting with reference to Lewis. I think Sager was in the

back seat with Whip and Lewis, and Mr. Renninger
68 was in the front seat with me, as well as I recollect.

When we got back to the station house the second time I do not think Whip went into the station with us. I think I left him in front of the station. He did go back to the station house with us. He had his automobile parked somewhere in that vicinity. When we went back to the station the second time I do not now recall that we talked to him inside the station. It was probably in the squad room there. They have several rooms in the station, one immediately in back of the desk and another room on the other side. We do have a room upstairs where we interview people sometimes. We could possibly have gone there that day that we made the first visit to the precinct. When we went into that room, whatever room it was, I do not recall that Whip was present; maybe he was. He was inside the precinct, and went in with me. I could not say whether Whip was at police headquarters that night or not. It is possible that he could have been there. Mr. Whip's duties bring him to headquarters, and I see him at headquarters almost every night. I do not recall that at headquarters another police officer in the presence of Lewis said to Whip, "What have you got him for; picking telephone boxes?", and Mr. Whip replying, "No, not that." I do not recall that. I am not sure whether Whip said anything to Lewis. I am not sure what was said. Whip possibly may have said something to Lewis there in the precinct. I don't know the names of any of the persons that I talked to at the Telephone Company other than Mr. Whip. I know there was two fellows in there and a white man at that Columbia Exchange the day I went in there, and it seems to me like he was a carpenter. He was re-
69 pairing a door, and he was the white man I talked to, him and two colored men, in regard to the watch being stolen there. That was before. It was the day after or possibly the second day after the theft was reported to me. I was up there alone. And that night, or the next day, I talked with Sager about the theft of the coat, and we got together, and I think Sager, as well as I can recollect, had a witness that saw Lewis in the North Exchange, and he said, "Well, here these witnesses that I got from the Columbia Exchange have seen the same man in the Columbia

Exchange about this same thing, so it is evidently the same man that is working both exchanges." That is why Sager and I got together on it, and as well as I can recollect now I got Lewis' address from Sager. Sager was in that precinct there.

Thereupon further to maintain the issues on his part joined the plaintiff called as a witness **Isadore H. Halpern**, who, having been duly sworn, testified as follows:

My full name is Isadore H. Halpern. I am a member of the bar and have been such since 1933. I heard the testimony of Officer Sager concerning my conversations with him about this case now being tried. At No. 2 precinct about a month after the arrest in the Lewis case Officer Sager told me that he did not want to arrest Lewis, but only arrested him upon the insistence of Whip, a Telephone Company employee. He told me that as a matter of fact he went to apprehend Lewis in Whip's car. He told me that he did not like Whip anyway, because Whip had gotten him into difficulty on some other matter before. He also told me that

70 Officer Wheeler was a better friend of Whip's than he was, and that he had gotten Wheeler to go with him to make the arrest, and he didn't want to go. He told me the reason he didn't want to arrest Lewis was because he didn't have enough evidence against him.

Referring to the occasion when I went to Sager's home, when we called on that occasion the call was answered by a woman, I presume it was Mr. Sager's wife. Upon going into his house we were invited to sit down. Before being asked that, I introduced Mr. Wood to Mrs. Sager and I said that Mr. Wood was associated with me in this case, after an introductory statement. Mr. Wood asked Sager if he had told me that he did not want to arrest Lewis but only did so upon the insistence of Whip, a telephone employee. Sager did not answer Mr. Wood's question. Mr. Sager said that he would not answer the question one way or the other, and that he would testify when he came to court about it. I talked with Mr. Sager twice on the day and night of the arrest. I talked with him about the question of the immigration law. On the occasion about one month after the arrest, at the conference which I have referred to, I talked with Mr. Sager for about an hour or an hour and a half.

Thereupon the plaintiff announced his case closed.

Whereupon the defendant moved the Court to direct the jury to return a verdict for the defendant, which was denied by the Court.

Thereupon the defendant to maintain the issues on its part joined called as a witness **Ernest R. J. Carter**, who, having been duly sworn, testified as follows:

My full name is Ernest R. J. Carter, and my occupation is that of plastering. About the 30th of April, 1934, I was
71 working in the telephone building known as the Columbia Exchange on Columbia Road near 14th Street.

I am not an employee of the Telephone Company. I am an independent contractor doing plastering work for myself. I missed a watch and chain that day. I last saw the watch and chain in my vest in the basement of the Columbia Exchange, 14th and Columbia Road. I had last seen that watch and chain about 9 o'clock, and I looked for it about 10 o'clock. I had not been out of the building meanwhile, but had been in another part of the building. I had been in the basement and on the stairway where I was working. When I looked for the watch I did not find it. It was a 21 jewel Hamilton watch, and 14 karat gold chain, and the two articles were of the value of \$75. I reported the loss to the wire chief on the first floor. I do not know his name. I do know Mr. Ayers. I did not report the loss to him. I reported it to the wire chief, and he reported it to the detectives, and there was a report to Mr. Ayers afterwards. It was reported to Mr. Ayers. I never did get the watch and chain.

Cross Examination

Thereupon on cross-examination the witness further testified: I reported it to the wire chief first. I do not recall his name. I do not know about his reporting it to Mr. Ayers. I did report it to Mr. Ayers myself afterwards. I reported it to the wire chief and later reported it to Mr. Ayers. Those are not the only two that I talked with about it at the Telephone Company. I talked to the detective when the telephone detective came up about it. I do not remember the name of the wire chief. I told him about that loss. I was on the stairway. I didn't see anyone go in the

basement where my vest was hanging. I do not
72 have the least idea who took my watch.

Thereupon further to maintain the issues on its part joined the defendant called as a witness **Herbert W. Harrington**, who, having been first duly sworn, testified as follows: My full name is Herbert W. Harrington. I am a foreman for the Chesapeake & Potomac Telephone Company and have worked for that company for 13 years. I was working for the Telephone Company about the 1st of May, 1934. On that day I had occasion to go to the North Exchange, 14th and R Streets, Northwest. I had an overcoat when I went there. It was a brown tweed overcoat. I entered the building and went to the basement, to the janitor's room in the basement, and laid the coat on a chair and went upstairs for about five minutes and came back downstairs and the coat was gone. I left the coat in the janitor room in the basement at the North Exchange. I reported the loss to Mr. Bullock. He was my supervisor. I called him immediately. He is general building and supplies superintendent. I reported it to him. The value of the coat was \$35. I never got the coat back.

Thereupon on cross-examination the witness further testified:

Cross Examination

I say it was Mr. Bullock I reported it to. I told Mr. Bullock it had been down there on a chair. I told him it was there only five minutes. The occasion of my going there that day was that I was working on inventory of furniture and fixtures and went there to straighten out some discrepancy in the inventory. The basement does not
73 go in off of the sidewalk. You enter the basement of that particular building in the rear and have to walk the full length of the basement to the front of the building where this room is partitioned to be used for janitor's supplies. It is a room about 15 feet square. I do not believe there was anyone in there when I went in. I had been in there a number of times before. I know the janitors who worked there. I knew all the men that worked in the building at that time. I think there were six men employed there in the capacity of janitors. They were colored men. I did not see any of them that morning when

I laid my coat on the chair. There was no one there. I then went upstairs. I went up two flights to the second floor in the building, and stayed there about five minutes. I did not see anyone going up or coming down. As a matter of fact I have not the slightest idea who took my overcoat. I do not recall whether I went in the front door or the back door. There is only one entrance to the basement and that is the back entrance. There are two entrances to the building. I do not recall whether I went in the back entrance. But you have to go through the back door to get in the basement. I did not use a key. The door was open. Mr. Bullock, to whom I reported the loss, is the building supply superintendent. He is my immediate superior. I did talk to someone else in the Telephone Company about the coat. I talked to a number of people then, told them that the coat was stolen; told a number of people the coat was stolen after it was gone. They were just co-employees of mine, men that worked there. I did not make any official report of it to any official other than Mr. Bullock.

74 Thereupon further to maintain the issues on its part joined the defendant called as a witness **Estil L. Ayers**, who having been duly sworn testified as follows:

My full name is Estil L. Ayers. I am building supervisor of the Chesapeake & Potomac Telephone Company and have been in the employ of the Company for 13 years. About May 1st, 1934, my position was building methods supervisor, and my office was located at 1111 North Capitol Street. On or about the 30th of April or the 1st of May it was brought to my attention that Mr. Carter, a plasterer, working at the Columbia Exchange building on Columbia Road, had missed a watch and chain. I reported that to my superior officer, Mr. F. E. Bullock. He is general building and supply superintendent. I know a Mr. Raymond C. Whip. I do not recall that I reported to Mr. Whip the fact that Mr. Carter stated his watch and chain had been taken, but I remember discussing the case with him after he had the assignment. I did talk with Mr. Whip. I do not recall whether I reported it in the first instance or not, not directly. My best recollection is that I reported it to Mr. Bullock.

Cross Examination

Thereupon on cross-examination the witness further testified: I reported it to Mr. Bullock the same day that the watch was stolen. The same day that I received the report I reported it to Mr. Bullock.

Redirect Examination

Thereupon on redirect-examination the witness further testified: I know Lewis, the plaintiff in this case. He formerly worked for the Telephone Company. He worked directly under me for about a year in 1928. At or
75 about the time I heard about this watch and chain having been stolen I did get information about Lewis having been seen in the Columbia Exchange building, and I conveyed that information to Mr. Whip.

Recross Examination

Thereupon on recross-examination the witness further testified: I do not know exactly when it was that I reported that information to Mr. Whip, but it was around several days after the affair had occurred. I do not know exactly the words I reported to Mr. Whip, but the gist of it was that someone employed in the plant, one of the painters, had told me they saw Lewis around the building some days prior to the watch disappearing. The painter was named John Thompson. I have not seen him in court today. He is still employed by the Telephone Company as a painter. I could not tell you offhand how long he has worked for the Telephone Company, but probably from 1927 or 1928. He started approximately about that time. I did not tell Mr. Whip the same day that I received this report that it had been stolen. It was some days later. I will not say how many days. I cannot tell you how many days it was, because the watch disappeared on Sunday, and we do not work on Sunday. It was some time when I was in the office later. I received a report of the stolen watch on Sunday. I got it by telephone. I communicated it to Mr. Bullock the same day. It was some days later that I gave this additional information to Mr. Whip. It may have been as long as ten days afterwards. I would not say just how many days it was. Thompson was working in the Columbia Exchange at the time, doing some painting. He is a

76 painter employed by the Telephone Company all the year round, to do painting in the various buildings. He would probably have his clothes in the basement in the janitor's quarters, if he went up there to do some work. I do not know whether he was doing work at that particular time on the first or second floor of the building. I never attempted to find out where Thompson did work in that particular building the day the watch was reported as stolen. When the painters work on a building they might work on any particular floor or on all the floors. They would not work on any particular spot. When I received this information I was in the office. My office was at 1111 North Capitol Street. The information was communicated to me by telephone. I was told over the telephone, and I communicated it to Mr. Whip.

Thereupon further to maintain the issues on its part joined the defendant called as a witness **Raymond C. Whip** who, after being duly sworn, testified as follows:

My full name is Raymond C. Whip. My occupation is special agent, Chesapeake & Potomac Telephone Company. I have been employed by the Company for 12 years. My duties as special agent are to investigate all robberies that they have, coin box robberies, any thefts in any of the buildings, anything of that nature. I was employed in that line of work prior to May, 1934. I did have my attention called to a report made by Mr. Carter, the plasterer, that his watch and chain had been taken from his vest pocket in the basement of the Columbia Exchange building on Columbia Road. If I remember correctly, I got the call at home. It was on Sunday. It was a telephone call. I do not remember who it was that called me. I do not remember just
77 who it was that called. To the best of my recollection I received the call at home and immediately went up to the Columbia Exchange. When I got there I talked to Mr. Carter, the gentleman that lost the watch, and got some information from him as to where he was working and where he had left the watch, the location, etc., and the building in which the watch and clothes were left. I did make a report of the matter. I made a report of that to the Police Department the following day. April 29th was on Sunday. That is the day that the watch was stolen. It was the following day that I made the report, and that

would be April 30. I made the report to the police on Monday. I reported it to Police Headquarters.

On or about April 30, 1934, I did have my attention directed to the fact that Mr. Harrington had missed his overcoat from the North Exchange building at 14th and R Streets. I believe Mr. Bullock called me regarding the coat. After I got the information about the overcoat I also reported that to the police headquarters. I make an assignment of everything that is stolen. I reported that to police headquarters. I did learn to whom had been assigned the matter of investigating the loss of the watch and chain. It was the jewelry squad, some sort of a jewelry squad that they have, if the amount is over \$35. That squad gets a report on jewelry and the clothing as well, but it always goes to the precinct too. I do know who got the assignment. Mr. Preston C. Wheeler is the one that got the assignment in the watch and chain case, and Mr. William F. Sager got the assignment in the overcoat case. Following the reports made by me I did see Mr. Wheeler and Mr. Sager. I saw them several days later at the Police De-

partment and at the roll call. I go down to the roll
78 call at police headquarters comparatively every evening. It is my practice to go there nearly every evening. I recall that I went to No. 2 precinct on U Street on May 10th, the day Lewis was arrested. I went there with Mr. Renninger. He is my partner. His full name is Lester O. Renninger. He is not here today. He is sick in bed. He has been here all this past week, but was taken sick Saturday evening. He was employed by the Telephone Company at that time as a special agent also. Renninger and I went back to the station house No. 2. The way we happened to go there was that Officer Wheeler, I think, called me and said he wanted me to meet him at No. 2, to meet him and Sager, and I went up there in my car. When I got there I parked my car and went into the station. Wheeler and Sager were there when I arrived. Renninger got there afterwards. Renninger and I did not go together. Renninger lived on Connecticut Avenue, and I lived in the opposite direction, but we met at the precinct. After we got there Wheeler and Sager said they were going up to see Lewis, and wanted to know if I would go along and identify him from the fact that I had known him as an employee

of the Company. So I accompanied them to the address on Florida Avenue, in the 1300 block, I do not know the number. We went up there in a two-door Chevrolet police squad car. Officer Wheeler drove the car from the station house to this place on Florida Avenue between 13th and 14th. I sat in the back seat of the car. When we got to that place Renninger and I stayed in the car and the two officers got out and went to the door, rapped on the door, and then came back to the car. After they came
79 back to the car Wheeler drove the car, and we went up in the vicinity of 14th and Columbia Road. I think they parked on the east side of 14th Street just south of Columbia Road. When the car was parked Renninger and I stayed in the car. The officers got out and went across the street. They were gone about 15 minutes, and when they came back they had Lewis with them. They then got into the car. Lewis got in the car. They put him between Renninger and I because Renninger had to get out to let him get in. I did talk to Lewis. I spoke to him. I said "Hello, Lewis." I did not say anything else to him. From there we went to No. 2 precinct. When we got to No. 2 precinct we all got out of the car and the officer took Lewis up into the other room where they talk with people that are brought in for investigation. I didn't say anything to Lewis there. I was listening to the officers when they questioned him. I did not accuse Lewis of stealing the overcoat or the watch and chain. I did not accuse him of anything. We were only there at the station house for a short while, 15 or 20 minutes, and then we went to 14th and R Streets, in the rear of the North Exchange. The North Exchange is at the corner of 14th and R, and the car was behind, in the alley in the rear. Wheeler drove the car from the police station to 14th and R Streets. The car was assigned to Wheeler and he drove it. When we got to the alley in the rear of the telephone building at 14th and R Streets we pulled up in the rear of the building and Sager got out of the car to locate a fellow that he called Shorty on a lot next door to the telephone building, a lot that was operated
by the Cherner Motor Company. I think it was that
80 company that operated the lot. It was a parking lot for used cars. They wanted to talk to this man Shorty to find out whether or not he could identify this

man Lewis. Shorty did come out. Shorty did not say anything there to Lewis. He came out and looked in the car and he and the officer walked away from the car. Shorty didn't say anything in the presence of Lewis. We were only there for a short while. I know the two men who worked for the Telephone Company. One is Willie White and the other is Odell Young. I do not recall seeing them there that day. I did not go into the telephone building and bring those two men out and have them look at Lewis and say anything to him. I did not bring anyone out. On that occasion when Lewis was in the car I did not ask Willie White and Odell Young did they ever see Lewis, the plaintiff, hanging around in the telephone building, the one that stole the watch and overcoat. I had no occasion to talk to them at all. I didn't call those men out and have them look at Lewis and ask if he had been there. The only fellow that saw Lewis that day was this fellow Shorty. I did not go to some second-hand clothing store, a place called Sam's, which is on 14th Street across from the Lucky Strike bowling alley. I think Renninger went there. He did not stop the car in front of there and any of us go in there. When we left 14th and R Streets we went back to the station. We went back to the precinct and I got in my car and drove it down. When we went back to the station house Wheeler drove the car. I did not go into the station house when we went back. I got my car that was parked. I did go to police headquarters that night and I saw Lewis

81 there. I did not have a conversation with him there.

I was in the squad room when Wheeler talked to him the second time.

While I was at police headquarters that night and as Lewis got off the elevator, no officer said to me, "Who do you have him here for, picking telephone boxes?", and I did not say, "No, not for that." I do not recall any such conversation with anyone, and I did not have such a conversation as that. I do not know of my own knowledge when Lewis was released. I did not at any time request or suggest to Officers Wheeler and Sager or to either of them that Lewis be arrested. I simply gave the officers, as I always do, what information I could, and they acted on it according to their own judgment. I never ordered Lewis' arrest or directed that he be arrested. I had no authority to order

anyone's arrest. I was never authorized by my superior officers to cause the arrest of Lewis, and I never caused his arrest. I merely reported what I learned to the officers.

Cross Examination

Thereupon on cross-examination the witness further testified: In all these instances I go with the officers sometimes when they make arrests. I do not have any authority in Washington to arrest anyone. If I find a suspect in any case and learn something from the telephone company office, I could not make the arrest myself unless it was a felony. If it is not a felony I would have to get a Metropolitan policeman to make the arrest. I have authority of my company to make these investigations and to make reports to the Police Department. My officers do not tell me what to do. In some cases I have gone with the police officers.

82 There may have been some instances in which my superior officers under whom I work knew that I had gone with the police officers on investigations like this. I would say they had never told me not to do that. I cannot recall any one case where they told me not to do it. I have not always gone on these cases of investigative work with the officers of the Metropolitan Police Department under my general authority. There are lots of times that I have not gone with them when officers investigate it themselves or handle the complete investigation themselves. Sometimes I do participate in the investigation. It all depends on how much work we have on hand.

I could not tell you Shorty's last name. I did not ever try to find out what it was. I do not know where he works. I do not know what sort of work he was doing on the parking lot. I presume he worked for the owner of the parking lot. He never worked for the Telephone Company, and does not to my knowledge work for them now. I did talk to him before that time I went there with the officers. As a result of my talk with Shorty before this occasion when I went there with the officers I afterwards conferred with the officers. I did not give the officers Lewis' name. I do not know who gave them Lewis' name. Mr. Ayers did call me on the telephone and tell me that he had received information that Lewis had been seen in the Columbia Exchange building, and after that I did communicate that information

to the Metropolitan police. I told them what Mr. Ayers had told me. I did report that to the police; that was several days afterwards, I do not recall the date exactly. The loss of the watch occurred on Sunday the 29th of April, and I reported it on Monday the 30th of April, and it was in that week, toward the end of the week, that I gave them this information that I received from Ayers. That was given in person. I had a conversation. I knew Lewis before when he worked for the Telephone Company. I do not know why I should talk to Lewis about milk. I do not know how long it was that I knew Lewis before the theft of the watch and coat. I do not know how long he had worked for the telephone company. I did not keep track of the janitors. I knew in what capacity he worked. I did not know what his duties were. I cannot say that I have ever seen him take any bottles of milk to the operators on their relief periods. I was not very often in and out of the building where he worked. I did not have a key to the door. I have a key to the building down town, that is at 725 13th Street.

I knew John Thompson who worked for the Telephone Company. I did not know him by the name of John Thompson. I know Thompson who works up at the wire chief's office, which is located on Columbia Road and 14th Street, Columbia Exchange. I never talked to him about this case, that I recall. I do not know whether John Thompson does any painting or not. I know a couple of painters we have. I do not know whether we have a Thompson that is a painter or not. The one that I know is a watchman. I never talked to any John Thompson about either of these cases.

On the 10th of May I went to the precinct. I had a 1934 Plymouth car. It was a two-door car. Renninger did not go up there with me. I met him there. He went up in his car. He is my assistant. He had not made any investigation of these cases for me. Renninger had just come with me at that time, and I was breaking him in. He did not know anything about either of these cases except what I told him. I was taking him with me to give him some experience on similar investigations of that kind. He did not talk to the police officers or to anyone else, so far as I know, about either one of these cases. He just listened. He had been working for the Telephone Com-

pany about four or five years prior to that time in the office for a while and later outside and then came with me. I do not know exactly how long he had been my assistant prior to May 10, 1934, but a short while. On that day I did not tell the officers where Lewis lived. I did not say awhile ago that I called the officers and gave them the information after they talked with Ayers about Lewis. I said that I saw him at headquarters and personally gave them that information. On that occasion I did tell them that Lewis had previously worked for the Telephone Company. I did not give them the address where Lewis lived, because I do not know to this day what his address is. I could not tell you the number of the house. When we went there we parked up the street. I could not tell you the number. I would not know the house if I saw it. It is one of these rows of houses, houses with Colonial porches. I believe the Telephone Company has the address of all of its employees. I could not tell you that the address where he lived on that day was the same address that he lived when he worked for the Telephone Company. I never had occasion to look up the address prior to that time. I recalled when I
85 received the information that he was the same Edgar Lewis that had worked for the Telephone Company. When I received the information from Mr. Ayers about Lewis having been seen in the building, I recalled in my own mind that it was the same Lewis that had previously worked for the Telephone Company. I was told that it was the same one that worked for us. I was not told what his address was at that time. I think it was Mr. Ayers that told me that it was the same Lewis. I am not positive that we first went to the police precinct after leaving 1401 Columbia Road. I do not recall. It seems to me we went to the precinct first, to the best of my recollection. This is three years or more ago.

We never went to a second-hand store of any kind. It is possible that we went to the R Street Exchange before going to the police precinct, but I do not think we did. I think we went to the precinct first. I was sitting in the back seat with Renninger and Lewis was sitting between us. Wheeler was driving the car and Sager was sitting with Wheeler. When we arrived near this parking lot at the R Street Exchange I think Sager got out at the parking lot.

I did not get out at all. I think it was Sager who talked to Shorty about 25 or 30 feet away from the car. He was not up next to the car. I could not hear what he said. After that Sager did not bring Shorty over to the car where I could hear them talk. Shorty walked over to the car and looked in the car and walked away, but nothing was said. I do not know that there was any other colored man standing around at that time. I could not tell you where Willie

86 White and Odell Young worked on May 10, 1934. I know the type of work they do. It is janitor work.

I do not know what building they were connected with. I do not remember whether they were working there on that day or not. I would not like to say that they worked in that building on R Street on that date, May 10, 1934. I do not know whether they were there on that day or not. I know they are with the company now, but whether they were at that exchange at that time I do not know. I do not recall having seen them there that day. I do not remember whether there were any colored men around the outside of the building besides Shorty. There were some cars in the alley, I recall that. I did not hear any colored man say to Lewis while sitting in the car, "What is the matter", and I did not hear Lewis reply, "I do not know." Nobody talked to Lewis that I know of, and I was right there in the car with him. Shorty came over and he walked away, and nothing was said. They had a conversation over in the lot. By that I mean Sager and Shorty. I think Wheeler was in the car. I am not sure whether he was in the car or not. He was there, but whether he stayed in the car all the time I would not say. It is my best recollection that Sager was the only one who got out of the car. Wheeler might have gotten out and stood near the car. I do not recall that he did go away from the car any distance. I did not hear Shorty or any colored man that stood there say to Wheeler, "He looks like the man I saw coming out of there, but I would not testify in court that he was." I did not hear anything like that. Shorty said that to me when I first went to the lot before I reported it to the police department, when he gave me the description and told me
87 later, and also told the officers. I am only quoting the officers when I say that. He told them that before we left there. I did not tell them that, and I did not

say he told me that, and I told it to Wheeler. He told me that later. I did not say that he told me that and then I reported it to the officers. If I did say that, it was incorrect. He told me afterwards, after I went back to the Exchange later on after having left the police officers. Nothing like that was said there on that date, not while we were parked in the car in the alley. On May 10th, when we were parked there with Lewis in the car, nothing was said by Shorty or any other colored man to Lewis in my presence to the effect that Lewis resembled the man, but that he would not be positive in identifying him and would not testify in court that he was the man. Shorty did not tell me that because I didn't get out of the car. I stayed in the car. It was later when I went back there that Shorty told me that. While I was in the car, if you want my knowledge, Shorty told that but not in my presence. I said a while ago that Sager was the only one that got out of the automobile, and later that Wheeler might have gotten out and stood alongside the car. That is the best of my recollection, that Wheeler stood outside the car. I also said that after Sager talked with Shorty for a minute or so about 30 feet away, that Shorty then appeared alongside the car. I did not hear him or any other colored man say there at that time that this man, meaning Lewis, resembled a man he had seen coming out of the Exchange, but he would not identify him in court. That was not said

there at all. Nothing like that was said there at all
88 on that date, at the time he brought him to the car.

It was not until afterwards, after Shorty walked back or walked over to the car, Shorty looked in to see if he could identify Lewis, and then he and the officer walked away, and then this conversation, he having that conversation after walking away from the car, and Sager told me that Shorty had said, "I think that is the man, but I would not want to go to Court and swear to it." Sager told me that, and Shorty afterwards told me the same thing when I went back. I went back to the lot. I went back to Shorty and asked him what he said, and he repeated the same thing to me. I do not know when it was I went back, but it was some time during that day, around noon, maybe before noon. I did not see Officers Wheeler and Sager then. I had left them. When they went back to the precinct they went

inside and Renninger and I got in our cars and left the precinct.

I went down to headquarters with Renninger that evening. I saw Wheeler there that evening. I do not recall having seen Sager, but I think Wheeler was there. I did not tell Wheeler I had been back to see Shorty again. He had known of the conversation. I went back because I wanted to talk to Shorty myself. The first time we went to the precinct I did not go upstairs to the squad room. Wheeler and Sager were downstairs and Renninger and I were downstairs. I got there first and we stood in the hallway. When we came back with Lewis the first time I did go up in the room. I stayed there about 20 minutes or 15 minutes, and all of that time Lewis was being questioned. He was asked if he was in either of these exchange build-

89 ings. I do not know that he was asked why he didn't admit taking the watch and overcoat. He was not told by me or anyone else that he did take them. As I told you before, I didn't talk to him there. I merely listened to the officers when they talked to him. In cross-examining him I did not say anything in the squad room at that time, and was not asked anything by either officer at that time. At no time did I ever go where Lewis was standing talking to the officers and let them come back. I sat down in a chair and listened. There were four or five chairs and we all sat down. When the officers sat there talking to Lewis they did not look over to me in order to verify statements. They had all the information they needed on their assignment. They didn't ask me for any additional information. I remained in the squad room because the officers asked me to. After staying in there about 20 minutes I came downstairs. Renninger was in the squad room also. I never did get Shorty's full name and address. I personally saw Shorty on two occasions. As far as I know Shorty only went to the telephone building to get water. He would get water from one of the stationary tubs that is located in the basement of the North Exchange at 14th and R Streets. It is not in the same room that Harrington left his coat. It is within 35 or 40 feet of it, to the best of my knowledge. Shorty is a colored man. From the time that Lewis was placed in the automobile at 14th and Columbia Road until the time we had been to the precinct and to 14th and

R Streets, I at no time said anything to him about either of these incidents. I spoke to him only once when he first got in the car and that is the only conversation I had with him. I said to him, "Hello, Lewis." At police head-
90 quarters that night I did not have anything whatsoever to say to Lewis. I think it was Officer Wheeler that talked to him down there. I can tell you why I didn't talk to him. I did talk to Officer Wheeler down there on that occasion. I did have a conversation with the officers when we were riding in the car. You do not ride along and say nothing. We did not talk about the case. They did not talk to me about it. There were some words spoken while we were in the car. I do not recall what was said. We talked about different things. You do not sit there and ride and say nothing. We might have mentioned some particular part of these thefts. I will not say that I did or didn't. I did not accuse Lewis on that trip or while in the precinct of what he was being held for or taken down for. I never talked to him about that. In my presence the officers told Lewis, after he got back and was at the North Exchange, that they were holding him for investigation. When we were in the car before getting to the precinct, I don't know whether the officers said anything to Lewis there about what he was being held for or whether they previously told him before they came to the car. I do not think they said anything about that in my hearing. I do not recall when was the first time any mention was made to Lewis by anyone as to what he was being held for. I do not recall whether the officers told him or had told him before he got to the car. I do not know. I presume they did. They would not take a man out of a building and not say anything to him. I am trying to give it to you. It is three years ago. From the time I got in the automobile all the time until we got
91 to the station, and the time we went to the R Street Exchange, and all the time going back to the precinct, I do not recall either of the officers saying anything to Lewis as to what he was being held for. I could not tell you of my own knowledge whether Shorty still works in the parking lot.

I talked with counsel in this case about being here. I have never talked to Shorty since my second conversation with him up on the lot. I talked with him twice. I never talked

to Odell Young about this case at any time. I never talked to any janitor about this case. I never talked with them except some cases they might be involved in. I understand that Willie White and Odell Young were named in one of the counts in the declaration in this case, but I did not talk to them about it.

Redirect Examination

Thereupon on redirect-examination the witness further testified: When this man Lewis was in the car I did not detain him or hold him in the car. The officer called me to come out there with him and identify Lewis, and the officer arrested him, and the reason for going down to the North Exchange with him was because of the fact that I had been in the precinct.

Thereupon further to maintain the issues on its part joined the defendant called as a witness **Noble D. Larner**, who being first duly sworn testified as follows: My full name is Noble D. Larner. I am employed by the Telephone Company, and have been in the employ of the Chesapeake & Potomac Telephone Company between 30 and 31 years. I am in charge of the general staff, supervision of the plant department. In May, 1934, I occupied the same position. In the plant department I do have something to do with the duties performed by Raymond C. Whip, special agent. He came under me. I was his immediate superior officer at that time, he working under my direction. It was brought to my attention that certain property was lost or stolen from the Columbia Exchange, consisting of a watch and chain belonging to a man named Carter, and I also heard that Mr. Harrington, an employee of the company, had lost his overcoat from the basement of the North Exchange at 14th and R. The duties of Raymond C. Whip were investigations, investigating anything in the nature of theft in the Company's buildings or the Company's property. He worked under my direction. I never did authorize Mr. Whip to have Edgar Lewis, plaintiff in this case, arrested. I never did give any directions with respect to Lewis, the plaintiff in this case. I never gave any directions to anybody, Mr. Whip or anybody else, that Lewis should be arrested. I did not instruct Mr. Whip to have the plaintiff in this case, Edgar Lewis, arrested. I did not

give any instructions to anyone to have the plaintiff in this case, Edgar Lewis, arrested.

Cross Examination

Thereupon on cross-examination the witness further testified: I am the immediate superior of Mr. Whip. I have discussed numerous cases with him, but there have been some that I have not. I should say that at some time or other I discuss with him practically all of the cases that he investigates. He frequently comes to me to talk to me about whether or not an arrest should be made in a particular case. Frequently, if it is something within his jurisdiction, he will handle it himself. I would not say that he has general authority and general instructions entirely to handle most of them himself. If he is investigating a theft and certain information is given to him about it, in one of our buildings, some theft from one of our employees or someone coming into the building, in a good many instances he does not come back to me and ask me details as to how to pursue it. He did not do so in this case. He did discuss the Lewis case with me but not before the arrest. As far as I know, this case was not discussed by me with Mr. Whip or anyone else until after Lewis was arrested. I am Mr. Whip's immediate superior, and anything done by him concerning the Lewis case was done without consulting me. Whip does not have authority to issue warrants in some of these cases. He has no authority whatever to issue a warrant, and he does not have authority to make arrests himself. Our legal department has charge of handling the case for the Telephone Company where warrants are requested to issue at the District Attorney's office for an arrest. I cannot say that I have given any written authority or instructions at any time to Mr. Whip that limit his authority and action and conduct in investigation cases. I cannot answer whether, when Whip first started to work for the Company, he was given written instructions what to do, because he was on that job before I became his supervisor. Since I have been his supervisor, up to May 10, 1934, I have not given any written instructions to him as to his conduct and action in investigating cases. I did not have any personal knowledge concerning the Lewis case before the arrest.

94 Thereupon further to maintain the issues on its
part joined the defendant called as a witness
Frank E. Bullock who, being first duly sworn, testified as follows:

My full name is Frank E. Bullock. My occupation is that of general building supplies superintendent, Chesapeake & Potomac Telephone Company. I have been with the Telephone Company since April, 1926. I was in Baltimore prior to that. In May, 1934, I was occupying the same position that I occupy now, general building supplies. I have charge of the building supplies and the motor vehicles. I did have reported to me the fact that Mr. Carter, a plasterer, had lost a watch and chain while his clothing was in the basement of the Columbia Exchange on Columbia Road near 14th Street, about May 1, 1934. I did make a report to Mr. Whip. I reported to him that Mr. Carter, a plasterer, had lost or had stolen from him a watch and chain from the basement of the Columbia central office, 1420 Columbia Road. I did have brought to my attention the report by a Mr. Harrington that he had lost an overcoat at the North Exchange, 14th and R. Harrington reported to me that fact, and I did report that to Mr. Whip. I told Mr. Whip that Harrington, whom I had sent to the 14th and R Street building to do a certain job, had reported to me that he took his overcoat off, a top coat, and placed it in the basement and went upstairs to check what he was to do, and he wasn't gone more than 20 minutes and came back and the coat was gone. I reported that to Mr. Whip.

Cross Examination

Thereupon on cross-examination the witness further testified: Mr. Harrington told me that he was not gone more than 20 minutes. He told me that he was gone
95 approximately 20 minutes.

Thereupon further to maintain the issues on its part joined, the defendant called as a witness **Willie White**, who, being first duly sworn, testified as follows:

My full name is William B. White. My occupation is elevator operator, and I work for the Chesapeake & Potomac Telephone Company. I was working for the Telephone Company in May, 1934. On the 10th day of May, 1934, I was working at the North Exchange at 14th and R Streets.

I know the plaintiff in this case, Edgar Lewis. He formerly worked for the Telephone Company, and I knew him when he worked there. I remember an occasion when Lewis was in an automobile in the rear of the telephone building at 14th and R Streets. I do not know what day it was. I did not have a conversation with him. He was with a man, I don't know who the man was. I did not know any of the men who were there. I do know Raymond C. Whip, an investigator for the Company. I did not know him at that time. I did not have a conversation with Lewis on that occasion. I did not hear Whip say anything about Lewis. I do not remember whether Whip was one of the men who was there. On that occasion Whip did not bring me up to the car and say, either to me or to Odell Young, "Do you know this fellow?", and neither Odell Young nor myself said, "Yes, Eddie", referring to Lewis, and Whip did not say either to me or to Odell Young, "When was the last time you saw him around this building?", and neither Odell Young nor myself said, that we hadn't seen him since he left there. I don't remember such a conversation. On that occasion Whip did not say to me, referring to Lewis, "Has he been hanging around the office or the building?".

96 In my presence Whip did not say to me, in referring to Lewis, "Is he the one that stole the watch and overcoat?"

Cross Examination

On cross-examination witness testified: I did not say that I did not know Whip on that occasion. No other man made a statement similar to that that Mr. Hoover read a while ago. On that day I was about as close to the automobile as from here to the banister, I would say. I do not know how long the automobile stopped there. I was washing a car. Edgar Lewis was in a closed car. What make I do not know. I do not remember whether it was a two-door or four-door car. I learned to know Whip after that occasion. I do not know that Whip was driving the car. The car was parked. I do not remember whether there was anyone sitting at the wheel. I had known Lewis for quite a while before that, during the time he was in the Company. When I saw him in the automobile that day I did immediately recognize him. He was in the car. I could not tell you

whether he was in the front or back. I did learn to know Whip after that. I could not tell you whether I saw him there that day. I did not know him at the time and didn't pay any attention to his face. I don't remember whether Odell Young was there. I was washing my car. I must have been off duty, as I was washing the car. I think it was in the daytime. I would not have been off duty at 10 o'clock in the morning in May, 1934, unless it was my day off. I do not remember whether Odell Young was there on that occasion. I did know him. He is a janitor for the Telephone Company. He was a janitor in the same building then, but is not now. Lewis was in the car. I was
97 on the driveway. I was as close to him as from here to this rail (indicating). I didn't say any words to Lewis. I might have bowed my head. I do not know a man named Shorty who worked there on the parking lot. The parking lot is not occupied now. I don't know whether it was occupied then. I could not say. There is an alley that runs north to south and a little driveway that belongs to the Telephone Company, and that is where I was washing the car. The car in which Lewis was seated stopped on that side of the building. I didn't pay much attention as to whether they did bring a man up alongside of the car. I don't know how long the car was there. I could not tell you the time. There is a parking lot there, but it is not occupied. I don't know how long it was occupied. It was a Cherner Motor Company parking lot for a while. I do not know whether it was in May, whether that long or not, but I know that lot is there yet. I do not know who took charge of the lot for the Cherner Motor Company when it was there. I do not know the manager of it. I saw quite a number of colored men working on the lot. I was out there quite often. I do not know that the lot adjoining the Exchange building was a vacant lot on May 10, 1934. I do not know whether Cherner was there then or not. I do not know whether he came there after that or not. I do not know whether the automobile in which Lewis was drove away before I finished washing my car—no, I finished my car before they drove away. I did not get in my car and drive away. I went in the basement.

Thereupon further to maintain the issues on its
98 part joined, the defendant called as a witness **Odell Young** who, being first duly sworn, testified as fol-

lows: My full name is Odell Young. Occupation, janitor, employed by the Chesapeake & Potomac Telephone Company. I have been working for the Telephone Company six years and nine or ten months. It will be seven years in June. In May, 1934, I was working at the North Exchange, 14th and R Streets. I know a man named Edgar Lewis, who sits here. I knew him when he worked for the Telephone Company. Some time in May, 1934, I saw him in an automobile in the alley back of the Telephone building at 14th and R Streets. I did not have any conversation with him on that occasion. I am not able to fix what day it was, but it was some time in May, 1934. It was after he had left the Telephone Company. On that occasion I did not have any talk with him. I did not say anything to him, and he did not say anything to me. We were not close enough together to have a conversation. I was fixing the garbage and they were some distance away parked in the alley. I knew Mr. Whip. Mr. Whip and Mr. Renninger were in the car with Lewis. On that occasion Mr. Whip did not come into the building and take me out to the car to speak to Lewis. Mr. Whip did not bring me out to the car and he did not say to me and to Willie White, "You know this fellow"—meaning Lewis—and neither Willie White or myself answered, "Yes, sir, Eddie". That did not occur. Mr. Whip did not ask me nor did he ask Willie White in my presence and hearing when was the last time we saw Lewis around that building, and I did not, nor did Willie White in my presence, reply, "Never since he left here". Such a conversation did not occur. Mr. Whip did not say
99 anything like that. On that occasion Mr. Whip did not say to me or to Willie White in my presence, "Has he"—meaning Lewis—"hung around the office building of the Telephone Company?" On that occasion Mr. Whip did not say, referring to Lewis, "Is he the man that stole the watch and overcoat?"

Cross Examination

Thereupon on cross-examination the witness further testified: In May, 1934, I must have been working for the Telephone Company for five years, because I have been there seven years in June coming. I have known Mr. Whip ever since I have been with the Company. Lewis was seated

in the back seat of the automobile. The automobile was moving when I first saw it. I saw Willie White out there. I did not talk to Willie White on that day. He was washing his car in the back. I was facing up the alley where I could see them approaching this way, not knowing who was in it until the time they got close enough. Willie White and the car in the alley were up practically where I was standing inside the window—the wall side—the car was parked by the wall; it didn't come up beside him because the alley is built so you cannot drive opposite where he was washing the car. There is a wire fence and back of that a place where they sell cars, a sales place. The lot where they sell cars is opposite the wire fence, and the car was parked opposite that. The wire came out like this, but he didn't have room enough to run his car. I would not know exactly how close up to Willie White it was. They did not park cars on that lot, just sold them from the lot that was enclosed with wire. I did not know by name anybody that worked
100 on that lot. There was a fellow there by the name of Shorty that worked there. They called him Shorty. I do not know what his full name was. I have not seen him there recently. I have not been there recently myself. When I said I was taking some garbage out, I mean that I came from upstairs on the elevator and didn't have to go outside but emptied the garbage from the window, one can into the other. I was still in the building. I was still inside, and through the window I saw this car coming with Lewis. I did not go out after it stopped. The car was a '32 Plymouth, it looked like to me, a four-door sedan. I do not remember whether Whip was driving the car or not. I do not know what kind of a car he had then. As near as I can remember the make, it was a four-door Plymouth. I do not know whether Mr. Whip was driving the car or not. It appears to me Mr. Whip was in the back seat. Whether he was driving or not definitely, I do not know. At the time I saw him he was inside the car. I could not see how many other people there were in the car, only Mr. Renninger and Mr. Whip. I did not go outside after seeing the car. I stayed inside. I could not go outside because I was working. I could not say any number of feet the car was away from me when it stopped. I was not close enough to hear any talking going on in the car. I watched it there until it

pulled way. During the time that the car was there I saw them bring a man alongside the car. This Shorty came back. I saw him come from the lot up to the car. He stayed there about 3 to 5 minutes. I do not know who he was talking to. I saw him come to the car. I didn't see anyone else with him. There might have been someone. I didn't pay any attention because I was doing my
101 work. I was in the window when they drove up and that is where I stayed.

Thereupon defendant announced its case closed.

Thereupon the plaintiff, **Edgar Lewis**, to maintain the issues on his part joined, testified in rebuttal as follows:

I have been previously sworn in this case. At the time I worked for the Telephone Company I did not know an employee by the name of Shorty who worked on that lot that has been referred to in the testimony. I did not know anybody by that name after I discontinued working for the Telephone Company. I did not personally know any employee that worked on that lot while I was with the Telephone Company or since I have left them.

Thereupon the plaintiff announced his case closed.

Thereupon counsel for the plaintiff announced in open court that the fourth count of the declaration had been abandoned, and the Court withdrew said count of the declaration from the jury.

Whereupon counsel for the defendant moved the Court to direct the jury to return a verdict for the defendant and offered its prayers for instruction to the jury, being Defendant's Prayers Nos. 1, 2, 3 and 4, which said prayers are as follows:

Defendant's Prayer No. 1.

The jury are instructed, as matter of law, that their verdict should be for the defendant.

Denied with exc

J.W.C.

102

Defendant's Prayer No. 2.

The jury are instructed, as matter of law, that their verdict should be for the defendant under the first count of the declaration.

Denied with exc.

J.W.C.

Defendant's Prayer No. 3.

The jury are instructed, as matter of law, that their verdict should be for the defendant under the second count of the declaration.

Denied with exc.

J.W.C.

Defendant's Prayer No. 4.

The jury are instructed, as matter of law, that their verdict should be for the defendant under the third count of the declaration.

Denied with exc.

J.W.C.

Said motion and the said several prayers for instruction, after argument by counsel for both the plaintiff and defendant, were overruled by the Court, to which ruling counsel for the defendant then and there duly excepted, and prayed the Court to note the allowance of such exception upon its minutes, which accordingly was done.

Whereupon, after being charged by the Court, the jury retired to consider of their verdict.

AND BE IT FURTHER REMEMBERED that the foregoing contains the substance of all of the evidence given on the trial; and each of the exceptions stated to have been taken by counsel for the defendant, the Chesapeake
103 & Potomac Telephone Company, were so taken and were duly allowed by the Court and entered upon its minutes before the jury retired to consider of its verdict, and in order that all and each and every thereof may be preserved and made of record in this cause, this bill of exceptions is duly stated, signed, approved and ordered to

be made of record in the above entitled cause this 15th day of June, 1937.

By the Court:

JOSEPH W. COX
Justice.

Bill of exceptions satisfactory

LESTER WOOD I. H. H.
ISADORE H. HALPERN

Attys for pltf.

GEO. P. HOOVER

Atty. for deft.

Endorsed on Cover: No. 7020. Chesapeake & Potomac Telephone Co., a Corporation, Appellant, vs. Edgar Lewis. United States Court of Appeals for the District of Columbia. Filed Aug. 11, 1937. Moncure Burke, Clerk.

FILED JAN 28 1938

IN THE
United States Court of Appeals for the
District of Columbia

CLERK

APRIL TERM, 1937.

No. 7020.

CHESAPEAKE & POTOMAC TELEPHONE CO.,
a Corporation,

APPELLANT,

vs.

EDGAR LEWIS,

APPELLEE.

BRIEF FOR APPELLEE.

LESTER WOOD,
ISADORE H. HALPERN,
Attorneys for Appellee.

TABLE OF CONTENTS.

	PAGE
Preliminary	1
Statement of the Case	2
Argument	6
Conclusion	32

TABLE OF CASES.

Adams v. W. & G. R. R. Co., 9 App. D. C. 26	30, 31
Kinchlow v. Peoples Rapid Transit Co., <i>et al.</i> , 66 App. D. C. 382	30, 31
Prigg v. Lansburgh, 5 App. D. C. 30	12, 21-25, 31
Takahashi v. Hecht Co., 60 App. D. C. 176	11, 12, 14, 19, 20, 30, 31
Takahashi Hecht Co., 62 App. D. C. 72	11, 14, 15 26, 27, 31

IN THE
United States Court of Appeals for the
District of Columbia

APRIL TERM, 1937.

No. 7020.

CHESAPEAKE & POTOMAC TELEPHONE CO.,
a Corporation,

APPELLANT,

vs.

EDGAR LEWIS,

APPELLEE.

BRIEF FOR APPELLEE.

Preliminary.

This is an appeal in an action for damages, for the unlawful arrest and imprisonment of the appellee, instituted in the United States District Court for the District of Columbia by the appellee, Edgar Lewis (hereinafter referred to as plaintiff) against the Chesapeake & Potomac Telephone Co., a corporation, appellant (hereinafter referred to as defendant) from a judgment in favor of the plaintiff.

Statement of the Case.

The evidence presented at the trial showed that the plaintiff lived at 1341 Florida Avenue, N. W., Washington, D. C., and that on May 10, 1934, worked at 1401 Columbia Road as janitor in an apartment house. (R-15.) That on said date at about 9:30 A. M., while he was mopping the floor, two men came through the front entrance and asked him where the manager's office was; (R-15-16); that these two men called on the resident manager, stayed about five minutes and then came back to him and said "Come on and go with us" and in response thereto he said "Go where?", to which they replied "You come and get your coat and go with us." (R-16.) That he started not to go and these two men grabbed hold of his arm and carried him down to the basement. That when he got to the basement he still objected to going and one of the men showed him a badge and told him "Get your hat. You are going with us." That these two men made him get his hat and coat and took him out through the alley, but made no statement at the time what they were taking him for. (R-16.) That he was taken by them to a parked car at 14th and Columbia Road near the apartment house where he worked. (R-16.) That when he reached the automobile, two men were sitting in the front seat and he recognized one of them as Whip, but that he did not know the other man sitting with Whip. (R-16.) That Whip was sitting at the wheel in front; that Whip was a man who worked for the telephone company, the defendant in the above entitled cause. (R-16.) That the plaintiff knew Whip worked for the telephone com-

pany as a detective or something because he had seen him down at the 14th and R St. telephone company exchange before. (R-16.) That he, the plaintiff, had worked at the telephone company for a period of five years and five months. That he had worked at the R St. exchange for about five years and had been transferred to the Columbia exchange where he had worked for about five months and while working at the telephone company he had seen the said Whip on several occasions; that he had worked for the telephone company as a janitor and had learned to know Whip about the year after he went to work for the telephone company. (R-16-17.) The plaintiff further stated that he was positive the said Whip was sitting at the wheel of the car and thereafter drove the car. (R-17.) That he was placed in said automobile by two men who came in the apartment house and forced him to go with them. The plaintiff was directed to get in the back seat where he sat with the two men who came into the apartment house and forced him to go with them. (R-17-18.) That said Whip and the man sitting in the front seat with him drove the automobile to 14th St. and S St. across the street from the Lucky Strike bowling alley, a second hand clothing store where one of the detectives sitting in the back seat with him got out and went into the store, stayed about five minutes, came back and got into the automobile (R-18); that he was then taken in the same automobile driven by the said Whip to the telephone company north exchange at which place said Whip got out (R-18), went through the back entrance of said exchange and shortly thereafter came back with two colored boys, one named White and the other

named Young (R-18); these two colored boys were brought over to the automobile by the said Whip who asked them whether they knew the plaintiff; they stated that they did after which the said Whip asked them "When was the last time you saw him around this building?" (R-18), to which they responded that they had not seen the plaintiff around said building since he stopped working there; that the said Whip was the one who asked these two colored men the question. (R-18.) Plaintiff was then taken to No. 2 Police Precinct on U St., in the same automobile which was being driven by the said Whip (R-18); that upon reaching the Precinct he was taken inside and questioned, at which time, the said Whip accused him of taking the watch and coat in question (R-17) and that this accusation was made by the said Whip in the presence of Mr. Wheeler and Mr. Sager, Metropolitan Police Officers. (R-17.) That when Whip accused him of taking the watch and coat he denied taking anything and knew nothing about it. (R-17.) The plaintiff was held at No. 2 Police Precinct until after dark at which time he was taken in the Police patrol to Headquarters with several other prisoners (R-19), where his finger prints and photograph were taken and he was placed in the line-up (R-20-21); that he remained in Police Headquarters for about three-quarters of an hour. (R-21.) That when he arrived at Police Headquarters he rode up on the elevator and in going through the corridor was met by the said Whip; that when he got off the elevator Mr. Whip and Mr. Sager were there, that said Whip and Mr. Sager walked back through the corridor with him and while doing so another Police

Officer coming through the corridor said "What have you got him for, picking telephone boxes?" (R-20.) That Whip said "No, not that"; that he did not know who the officer was who asked Whip this question; the plaintiff was then taken from Police Headquarters back to No. Police Precinct (R-21) and lodged in a cell where he remained all night until the next day at noon, May 11, 1934. (R-21.) That the cell in which he was placed was over-crowded, five or six men being in there with him which necessitated that he stand up until the next morning. (R-21.) The plaintiff further testified that he did not return to work until the next day May 12, 1934 (R-21), at the apartment house from which he had been taken by the Police Officers and that he continued to work there until pay-day at which time he was released. (R-22.) That he was never served with a warrant at any time nor told by Mr. Whip or the Police Officers who were in the automobile that they had a warrant for him (R-21) and that he was at no time ever charged with any specific offense. That he did not obtain other employment for a period of about six months; that his salary at the Columbia Road Apartment house was \$65.00 per month; that he worked at this apartment house for a period of about six months prior to the time he was arrested. (R-22.) That about six months after his arrest he secured employment at the Conard Apartment House, 1220 I St., at a salary of \$45.00 per month. (R-22.) That he ceased to work for the telephone company in 1933 because he was sick; that after he got well he went to 1111 North Capital St. to see the head man there, the telephone company official about his job, but that he did not get his job back. (R-22-23.)

Argument.

The only proposition presented by the defendant as an assignment of error and relied upon in its brief may be resolved into the following proposition of law and fact.

The court did not err in denying the motion of the defendant at the close of the whole evidence to direct the jury to return a verdict for defendant.

The question here presented is whether there is sufficient evidence from which it could be reasonably inferred, or which would warrant the inference that the defendant's agent Whip participated in the arrest and imprisonment of the accused (plaintiff) by the Metropolitan Police Officers, and thereby either directly or indirectly procured the arrest of the plaintiff. For, if the evidence was sufficient and gave rise to a question of fact only, then it was a sole question for the jury alone to decide and it necessarily follows that the court below did not err in denying the motion of defendant for a directed verdict and the case was properly submitted to the jury on the question whether defendant through its agents either directly or indirectly procured the arrest of the plaintiff and the judgment of the court below should therefore not be reversed. There is no more well settled principle of law than when a question of fact is presented, it is a matter solely for the jury to decide. It is contended that the evidence presented in the court below was amply sufficient from which it could be reasonably inferred and which would warrant the inference that the defendant's agent Whip

participated in the arrest and imprisonment of the plaintiff by the Metropolitan Police Officers and that the defendant's agent Whip either directly or indirectly procured the arrest of the plaintiff for the following reasons:

1. The testimony of the plaintiff fully shows that the defendant's agent Whip gave more than mere information to the arresting officers.

2. The entire evidence, as disclosed by the record, fully shows that the defendant's agent Whip gave more than mere information to the arresting officers.

3. The testimony of the plaintiff (R-15-26) fully shows that the defendant's agent Whip in company with another fellow employee and special agent of the telephone company, not only actually participated in the arrest of the plaintiff, but that the said Whip actually accused the plaintiff of stealing the watch and coat in question, questioned the plaintiff concerning both, was present and actively participated in the investigations which followed, all in the presence of the arresting officers.

4. The entire evidence as disclosed by the record, fully shows that the defendant's agent Whip, in company with his assistant and fellow employee, actively participated in the arrest of the plaintiff. That both were constantly present when anything was done in connection therewith which either directly or indirectly brought about and caused the arrest of the plaintiff.

Any one of the above reasons was sufficient to submit the case to the jury in the court below under and by

virtue of the authorities submitted to this court for consideration in defendant's own brief.

It is a well settled rule of law supported by abundant authorities too numerous to mention and not necessary to cite, that before a verdict can be directed by the court and the case taken from the jury, the evidence must be considered in its most favorable aspect to the plaintiff. This very principle is referred to in the brief filed herein by the appellant. It is respectfully submitted that the case did properly go to the jury on the testimony of the plaintiff, for the following reasons.

An examination of the record, dealing with the testimony of the plaintiff (R-15-26) shows the active participation of the defendant's agent Whip and the defendant's agent Lester O. Renninger, particularly that of the said Whip, in the arrest of the plaintiff. The plaintiff testified that the said Whip drove the automobile in which he was taken from his place of employment in company with his partner and assistant, special agent Renninger, and the two Metropolitan Police Officers. (R-59.) The record will show that the said Renninger was not called as a witness and Whip said he was home sick in bed at the time of the trial. (R-59.) It is true that the said Whip and the two Metropolitan Police Officers deny that Whip drove the car. The plaintiff further testified that he was taken to a second-hand clothing store on 14th St., N. W., across the street from the Luck Strike bowling alley at which place the automobile was stopped and one of the Metropolitan Police Officers went into the second-hand clothing store where he remained a short time and the said

Whip, Renninger and the other police officer remained in the automobile in which the plaintiff was; that thereafter the said automobile was driven again by Whip (R-18) to the alley at or near the telephone exchange building located at 14th and R Sts., N. W., called the North Exchange (R-59), and said Whip went into the telephone exchange building and returned with two colored men (R-18), who were asked when they last saw the plaintiff in this building of the telephone company. Both stated that they had not seen the plaintiff since he stopped working in this building. (R-18.) It is true that the said Whip denied that he went into the building and brought the two colored men out. At this same place the record will further show (R-51) that a colored man by the name of Shorty was brought to the automobile and asked if he could identify plaintiff as the person whom he saw in the telephone company exchange on the day of the theft. This colored man (Shorty) stated that plaintiff "resembled a man he had seen in the exchange but that he would not go to court and testify that he was the man"; that he could not positively identify him. (R. 51-60-65-66 and 67.) At this point plaintiff was taken back to No. 2 Precinct. Plaintiff testified among other things that at the Precinct Whip accused him of having stolen both the watch and the coat and questioned him concerning both (R-17-19) at which time the following took place according to the record, page 19, starting at the end of the 4th line.

"Whip asked me if I had any jewelry and I said, 'Yes, I have a watch'. They said, 'Where is it?' I

said, 'Across the bridge.' By that I meant it was over at the pawn shop Hornings. Whip asked me about the coat. I told them I had three or four coats, that I didn't need to steal anyone's coat. They kept me up there and pressed me and brought me down to the desk. When I say 'as to whether they all brought me down to the desk and detective Sager and Wheeler came down with me. After that 'they' carried me to a desk and booked me up there and took my stuff away and took my belt off and placed me in a cell.'" The same evening the plaintiff was taken to police headquarters and without stating all of the testimony concerning what happened, reference is only made to a part thereof which supports the point now being discussed, namely that the plaintiff's testimony alone was sufficient to take the case to the jury in the court below. The plaintiff further testified (R-20) that while at police headquarters when he was going through the corridor he met the said Whip; that when he got off the elevator at police headquarters to go through the hall leading back to the room where the finger printing and questioning was done, the said Whip and detective Sager were there; that Whip was close to the elevator and that while walking back with Whip and detective Sager another police officer met them and said "What have you got him for, picking telephone boxes?" To which question Whip replied "No, not that." (R-20.) The record will show (R-67) that Lester O. Renninger, Whip's assistant and also a special agent for the telephone company went down to headquarters with the said Whip on the evening just mentioned. The plaintiff was then returned to No. 2 Precinct where he was held all night

and not released until about noon the next day. (R-21.) Thus, this testimony shows conclusively the act of participation of the said Whip in the arrest of the plaintiff and the events that occurred subsequent to his arrest. It is submitted that the above facts are sufficient to bring the instant case squarely within the ruling laid down by this court in the cases of Takahashi vs. Hecht Co., 60 App. D. C. 176 and Takahashi vs. Hecht Co., 62 App. D. C. 72. We further submit that the Takahashi case, *supra*, supports the view here contended for and his authority for the proposition that the court did not err in refusing to direct a verdict in favor of the defendant in the court below.

Takahashi vs. Hecht Co., 60 App. D. C. 176, was an action to recover damages for false arrest and imprisonment. The lower court directed a verdict at the close of the plaintiff's case. On an appeal to this court from the judgment of the Supreme Court of the District of Columbia it was held that the court below erred in excluding certain evidence and in directing the jury to return a verdict for the defendant and therefore the judgment of the lower court was reversed. The case was again tried in the lower court and Takahashi vs. Hecht Co., 62 App. D. C., 72, was an appeal from the judgment of the Supreme Court entered by reason of a directed verdict at the close of the plaintiff's case again in the lower court. This court again held that the court below erred in directing the jury to return a verdict for the defendant and reversed the judgment.

In the case of Takahashi vs. Hecht Co., 60 App. D. C. *supra*, at page 178, speaking through Mr. Justice Groner the court said:

“If defendant, in an effort to protect its customers from the loss of their property while in its store, believing plaintiff guilty, had set in motion the machinery of the law to have her brought to trial, in the ordinary course of things it would have acted precisely as the evidence shows it did, and if it did, and with no greater cause than is shown by the evidence here to justify its action, then the plaintiff was entitled to recover, and, on the showing above by her, nothing to the contrary save the statement of the store detective that he had taken the customer complaining of the loss to the station house with him, and had there declared that his employer was not responsible for the complaint, we think a case was made sufficient for submission to a jury.”

In the case of Prigg v. Lansburgh, 5 App. D. C., 30, this Court held:

“Mere information to the officers of the law by a citizen, tending to show that an offense has been committed and that some person named may be suspected of its commission, is not sufficient, of itself, to warrant the inference that the informer or his agents participated in the unlawful arrest and imprisonment of the accused by the officer.”

It is submitted that the evidence in the instant case disclosed by the record shows that the defendant's agent Whip went far beyond merely furnishing information to the police officers.

The facts in the case at bar are strikingly similar to those in the Takahashi case, *supra*. The participation of the agents of the defendant in the Takahashi case took place in the Hecht Company's building itself,

whereas the participation of the defendant's agent Whip in accompanying the officers from the time the plaintiff was apprehended until he was eventually lodged in No. 2 Precinct the same day, thereafter the appearance of the said Whip at police headquarters the same night, did not take place in the telephone company's building as in the Takahashi case. However, this serves to accentuate the said Whip's interest and his apparent desire to pin the crime on the plaintiff and to have him arrested. The facts in both cases show active participation on the part of the defendant's agent in bringing about the arrest of the plaintiff. In the case at bar the two Metropolitan Police Officers who actually arrested the plaintiff testified that they merely called the said Whip and requested that he accompany them for the purpose of identifying the plaintiff. The court's attention is called to the fact and the record will show, (R. 15-16) that when the two police officers made the arrest in the apartment house in which plaintiff worked, they did not take said Whip into said building, but went in and made the arrest and brought him out to the automobile which the said Whip was driving and in which they had gone to said apartment house. If the said Whip was merely called for the purpose of identifying the plaintiff, why is it that we find him going with the officers to the second-hand clothing store, the telephone exchange building, the second floor of No. 2 Police Precinct and participating with the officers in the questioning and investigation, as well as interviewing certain possible identification witnesses, plus his appearance with his assistant at police headquar-

ters the same night. It is submitted that the said Whip could not legally make an arrest and the police officers could and that he went along with them to endeavor in every way he could to pin the crime on the plaintiff, which could not be done because the plaintiff was innocent and later released because of his innocence. If the said Whip was called by the police officers merely for the purpose of identifying the plaintiff he would not again have had to appear at police headquarters the same night.

It is not necessary and the law does not require that evidence be produced to the effect that the defendant's agent stated in so many words "Arrest the plaintiff", "Lock him up he is guilty." In this type of case it is extremely difficult and almost next to impossible to produce such evidence. The plaintiff is compelled to call as witnesses those who have participated in the arrest. Everything said and done does not take place in the presence and hearing of the plaintiff because of the very nature of things. What actually took place is peculiarly within the knowledge of the defendant. The plaintiff is forced by necessity to call witnesses to prove his case,—unfriendly witnesses. The courts recognize this situation and as long as the plaintiff shows active participation or any participation, from which it can be legitimately inferred that the defendant either directly or indirectly procured the arrest of the plaintiff, no such direct request, in so many words, by the defendant through its agent or agents to have the plaintiff arrested is necessary. *Takahashi vs. Hecht Co.*, 60 App. D. C. and 62 App. D. C., *supra*. In the *Takahashi*

case no direct request was made by the defendant's agents for the arrest of the plaintiff of the police officer O'Dea, although there was evidence that one of the defendant's officials did say to another official "Have the girl arrested", not in the officer's presence, and the official, in effect, said this would not be wise because it might involve the defendant in trouble. It was then decided to have the owner of the ring make the complaint and to have the defendant stay out of the matter. Yet this court held, because of other things which took place and from which it could be legitimately inferred that the defendant company's agents "either commanded the arrest or instigated the police to make it." *Takahashi vs. Hecht Co.*, 62 App. D. C., *supra*, at page 74. As long as the defendant's agent participates in the arrest, causes in any way to bring it about, suggests to the Metropolitan Police Officers to make the arrest in question, this shows that said agent either directly or indirectly brought about the arrest of the plaintiff, and is sufficient. It is submitted that it also shows that it is a much different situation than the mere supplying of information to a police officer who makes the arrest on his own initiative. This is the contention made by counsel for the defendant, who contends that the said Whip merely furnished information to the Metropolitan Police Officers who arrested the plaintiff. With this contention we cannot agree because the testimony of the plaintiff, shows directly to the contrary and in fact proves conclusively active participation of the said Whip, the Special Agent of the defendant company in bringing about the arrest of the plaintiff.

It would therefore seem that counsel for the defendant in pressing his contention that the defendant's agent Whip, merely furnished information to the arresting officers, and did not either directly or indirectly bring about the arrest of the plaintiff, is blindly made, in utter disregard of the testimony of the plaintiff. It is further submitted that the proposition urged by the defendant that the Court below erred in refusing to direct a verdict in favor of the defendant, likewise loses sight completely of the plaintiff's testimony. In this connection it is most strongly urged that the facts testified to by the plaintiff, some of which are denied by the said agent Whip and the Metropolitan Police Officers give rise to a pure question of fact as to whether or not the defendant's agent Whip and his assistant Renninger, participated in the arrest of the plaintiff and either directly or indirectly caused his arrest. The case should have gone to the jury in the Court below on the bare statement of the plaintiff, to the effect that the said Whip accused him in the presence of the officers at No. 2 Precinct, of having stolen both the watch and coat in question. This likewise was sufficient to support the Court's refusal to direct a verdict in favor of the defendant, for to have done so, the Court necessarily would have been passing upon a question of fact. It was a question of fact for the jury to decide. If the jury believed the testimony of the plaintiff, as they evidently did, then their verdict should have been for the plaintiff. It therefore was a question for the jury to pass upon and not the Court. Consequently, this being so, it is extremely difficult for counsel for plaintiff to understand why there should be any

differentiation made between the facts presented here, as urged by counsel for the defendant, and the Takahashi case.

The above facts more or less relate to the testimony of the plaintiff and show the connection the defendant, through its special agent, Whip, had with the arrest of the plaintiff, from which the reasonable inference can be drawn that the defendant, acting thus, participated in the arrest of the plaintiff and which warrants the inference that the defendant, through its agent Whip, not only participated in, but actually caused the unlawful arrest and imprisonment of the plaintiff by the police officers. It necessarily follows and is therefore contended that this evidence, namely, the testimony of the plaintiff, is amply sufficient, and that the case should have been submitted to the jury by the Court below.

It is true and the record will show, that the testimony of the plaintiff is denied in some part by the said Whip and the two police officers and therefore conflicts with their testimony. However, be that as it may, this would not justify a directed verdict in favor of the defendant. While the testimony of the plaintiff, and the testimony of the said Whip and the arresting officers differs and is in conflict in some respects as to what happened on the day of the plaintiff's arrest, where he was taken first and what was said and done, it is indeed singular to know, and the record will disclose, (police officer Sager, R. 28-43) (police officer Wheeler, R. 43-53) (Whip, R. 58-69) that the testimony is in accord concerning the fact that

the said Whip, the special agent of the defendant, was present and with the arresting officers when all things were done respecting and in connection with the plaintiff's arrest. The record just referred to above will show that the said Whip made the complaint concerning the theft of the watch and coat to police headquarters for the defendant company and that the said Whip and his assistant, Special Agent Renninger, went in the automobile with the arresting officers to the plaintiff's home, thence to the apartment house where the plaintiff worked and was taken from by the police officers to the automobile referred to herein, the second-hand clothing store on 14th Street, the alley alongside the said defendant company's exchange building, No. 2 Precinct where the plaintiff was finally lodged in a cell until later in the evening of the same day, and last but not least and vitally important the said Whip and his assistant again appear at police headquarters the same evening of the day of the arrest of the plaintiff. Where the plaintiff was taken first is immaterial. From this fact the defendant has no escape. The said Whip admits that he was present and with the police officers at the places just mentioned. The said Whip and the police officers say Whip was called for the purpose of identifying the plaintiff, yet the said Whip was not even taken by the police officers into the apartment house where the officers first place the plaintiff under restraint. If the said Whip was merely called for the purpose of identifying the plaintiff, his constant presence, activity in all things that were done in connection with the arrest of the plaintiff, obviously would never have been necessary. The said

Whip was the agent of the defendant, as a special agent, whose duties as such special agent were "to investigate all robberies that they have, coin box robberies, any thefts in any of the buildings, anything of that nature." (R-58.) (Testimony of witness Bullock R-71.) It is submitted that the said Whip's constant presence, activities and participation in connection with all things done in connection with the arrest of the plaintiff make him in fact a party to the actual arrest itself. He, the said Whip, had no authority under the law to arrest the plaintiff with or without a warrant but stood by and caused the police officers to arrest the plaintiff and thereafter did everything he possibly could to pin the crime committed on the plaintiff. The record will disclose that the arrest was made without a warrant. This evidence aside from the testimony of the plaintiff, we submit, is another compelling reason why it was proper for the court below to submit the case to the jury for consideration. We submit that in the face of such evidence the contention of counsel for the defendant to the effect that what the said Whip did in connection with the arrest constitutes mere giving of information to the police officers, is both unsound and unfounded.

This court, in the case of *Takahashi vs. Hecht Co.*, 60 App. D. C., *supra*, (the same excerpt having been previously quoted) said:

"If defendant, in an effort to protect its customers from the loss of their property while in its store, believing plaintiff guilty, had set in motion the machinery of the law to have her brought to trial, in the ordinary course of things it would have acted precisely as the evidence shows it did, and if it did, and with no greater cause than is

shown by the evidence here to justify its action, then the plaintiff was entitled to recover, and, on the showing above by her, nothing to the contrary save the statement of the store detective that he had taken the customer complaining of the loss to the station house with him, and had there declared that his employer was not responsible for the complaint, we think a case was made sufficient for submission to a jury."

We submit the defendant, through its special agent Whip, in an effort to protect the owner of the watch and the owner of the overcoat from the loss of their property, while in its buildings "believing plaintiff guilty, had set in motion the machinery of the law" to have him brought to trial. And we further contend that the evidence offered in behalf of the plaintiff as shown by the record, is even more strong than that presented in the Takahashi case. What Whip the defendant's special agent did in this case, by his constant presence and activity in connection with the arrest of the plaintiff is as clear as the road to Church.

The court below ruled that the Takahashi case was controlling and therefore refused to direct a verdict in favor of the defendant.

A fair and clear interpretation of the evidence and facts submitted in the trial of the case below shows conclusively that the said Whip went much further than the mere supplying of information to the arresting officers and that he actively participated in the arrest of the plaintiff. When the plaintiff was taken from the apartment house in which he worked to the various places mentioned herein, and shown by the record, the

defendant's agent Whip was always present and in fact assisted in restraint and holding the plaintiff, which, we submit, shows conclusively that he did more than merely furnish information to the officers who actually arrested the plaintiff. Therefore, the principle laid down in the Prigg case does not apply, but that portion which states by inference that if participation in the arrest by defendant's agent is shown then more than mere information has been supplied to the arresting officers, does apply and which if shown, is sufficient to hold the defendant responsible for the plaintiff's arrest.

Further there is no similarity in the whole facts presented in the Prigg case relied upon by the defendant, and the facts presented in the instant case. The distinction between the facts in the Prigg case and the case at bar is obvious and readily seen.

In the Prigg case the facts were as follows:

“This action was begun by the appellant William Prigg, as plaintiff, against Lansburgh & Bro., Abram Hart and one Henry Raff, to recover damages for false arrest and imprisonment. Lansburgh & Bro. were retail merchants in Washington, and carried on a large business, requiring a great number of salesmen and clerks. Abram Hart was their bookkeeper, and Henry Raff was a detective officer in the service of the District of Columbia. Appellant was a salesman stationed on the third floor, and in the system pursued was registered as number 88. Each salesman was provided with a book of cheques or leaves, to be torn off in pairs or duplicates, which were also numbered consecutively. When a sale was made the salesman was required to enter the same upon the duplicate cheques, with the aid of carbon, one of which had

its heading printed in black and the other in red. The black and red cheques were both placed in the mechanical carrier, with the money, and sent to the cashier, where they were taken out, numbered and stamped. The black cheque was retained by the cashier, and, later, handed to the auditor; the red one was returned to the salesman, who then gave it, with the article sold, to the wrapper, who in turn handed it to the auditor. Thus the auditor was enabled to keep account of the cashier by comparing the duplicate cheques. It was observed that occasionally a black cheque was missing; that is to say, none was handed in by the cashier to correspond with certain red cheques delivered to the auditor. Suspicion was directed to plaintiff, as these missing duplicates were all red ones in his number. An arrangement was made to watch him. The floor walker was directed to give a signal to Hart when appellant was engaged in making a sale, and Hart dropped the word 'watch' to the cashier, whose assistants, save one, were not in the secret. In the afternoon of November 2, 1891, the word was given to the cashier, who, with an assistant, carefully watched the carrier. No cheques came from appellant. Soon after a red cheque was handed to the wrapper by appellant, showing the sale of a cloak for \$4. This cheque was submitted in proper manner and bore the number 2. Hart carried the red cheque to appellant, and asked if he remembered the same, to which he replied, 'I do.' Hart then said: 'Where is the other one? What did you do with that?' Appellant said he had sent it to the cashier's desk. Upon Hart's saying it had not been received, appellant said: 'Well, what have I got to do with that? I sent it down.' Appellant was requested to produce his book and the first cheque number therein was 19. The cashier then said: 'Mr. Prigg, how do you account for this \$4.00 cheque being No. 2, while the next cheque in your book is No. 19?' He replied: 'Why, I don't know; it looks right bad.' Appellant testified to his arrest as follows:

‘At the time of the arrest I was called downstairs by Mr. Gans, who was Manager for Lansburgh & Bro. Mr. Raff was there, and he said to me that it had been reported there was some money missing and asked me to make an explanation. I said I had no explanation to make; that I had a receipt from the cashier. I was asked to go with the officer.’ ”

Plaintiff was then taken to police headquarters where he was searched and detained a half or three-quarters of an hour and thereafter taken to No. 6 Precinct and placed in a cell. Subsequent thereto a charge of larceny was placed against him and he remained at the Precinct until the following morning at which time he was carried to police court and placed on bond for his appearance on the charge of larceny. Thereafter this charge was changed to embezzlement on which he was required to give bond. The plaintiff later had a hearing on this charge, and by reason of which was released. The facts further show that while at police headquarters Mr. Hart (official from Lansburgh & Bro.) came there and questioned him and stated to him that he, Mr. Hart, supposed there was a clique responsible for the missing of money in the Lansburgh store and that Mr. Lansburgh did not wish to prosecute the case against the plaintiff; “that if plaintiff would make a confession against the gang the matter would be allowed to drop.” The evidence does not show that Mr. Hart talked to the plaintiff in the presence of any police officers. The plaintiff stated that he had sent to the cashier’s office the black check with the red one and the \$5 handed to him by the purchaser of the article sold; that he received back the red check and \$1 in

change which he gave to the customer. There was further evidence to show that money shown on the red checks of the plaintiff's number (88) and for which no corresponding black checks could be found amounted to \$28.25 from October 23 to November 2. The evidence further showed that neither of the Lansburgh Brothers "*was present during any of the proceedings in the store, and no order was given by them so far as the testimony given showed.*" (Italics ours.)

It is submitted that the facts related above in connection with the Prigg case are in no way similar to the facts involved in the instant case. The facts in the Prigg case disclose that investigation was made, by defendant's employees, on good and sufficient grounds and the plaintiff was the salesman involved. No Metropolitan Police Officer was called when this investigation was made and not until such investigation was concluded, at which time, the Metropolitan Police Officer Raff, was called. The evidence fully discloses that the officer Raff made the arrest himself after the plaintiff was called to the Manager's office and told by the Police Officer Raff that some money was missing and was asked by the officer to make an explanation, to which he stated he had no explanation to make. That he had a receipt from the cashier. Thereafter he was asked to go with the officer by the officer. These facts disclose a report merely to the Police Officer who made the arrest. These facts disclose no participation by the defendants in the arrest of the plaintiff. The facts further show that suspicion justifiably pointed to the plaintiff. It is submitted

that a careful reading of the entire record in the instant case, will disclose an entirely different picture from that disclosed in the Prigg case. The facts in the instant case show the constant presence of the defendant's agents while the arrest was being made, the investigation that following thereafter, and the further investigation made later the same evening on the day of the arrest at Police Headquarters. No such facts are presented in the Prigg case. It is therefore contended that these facts successfully show, not only active participation in the arrest of the plaintiff by the defendant's agents, but that they either directly or indirectly procured the arrest of the plaintiff.

At this point it is desired to call the Court's attention to the testimony of the witness Isadore H. Halpern, who was in the trial court and still is one of the attorneys appearing for the plaintiff, testified for and on behalf of the plaintiff, among other things, according to the record (R. 53) as follows:

“At No. 2 precinct about a month after the arrest of Lewis case Officer Sager told me that he did not want to arrest Lewis, but only arrested him upon the insistence of Whip, a Telephone Company employee. He told me that as a matter of fact he went to apprehend Lewis in Whip's car. He told me that he did not like Whip anyway, because Whip had gotten him into difficulty on some other matter before. He also told me that Officer Wheeler was a better friend of Whip's than he was, and that he had gotten Wheeler to go with him to make the arrest, and he didn't want to go. He told me the reason he didn't want to arrest Lewis was because he didn't have enough evidence against him. It was necessary for the witness Halpern who was the attorney for the plaintiff to testify because the witness

Sager had previously denied that he made the above statements to the witness Halpern. The witness Sager according to the record (R. 29), among other things, testified as follows:

“About two months after the arrest at No. 2 precinct I did not tell Mr. Halpern, the gentleman sitting at the trial table, that I did not want to arrest Lewis, that I only arrested him upon the insistence of Whip. I made no such statement. I did not make such a statement at No. 2 precinct about a month after the arrest of Lewis. I did not say to Mr. Halpern when he was investigating or inquiring about the arrest of Lewis, that I did not want to arrest him because I did not have enough evidence against him, and that I told Whip that I only arrested him because of the insistence of Whip, and I did not also request that Whip get a warrant for him and Whip refused to do so.”

At this point the record will show (R. 29) that counsel for the plaintiff claimed the right to cross-examine the witness on account of surprise and the examination of the witness Sager thereafter was continued.

It is submitted that the above is another piece of evidence in the case from which the jury should have found that the defendant's agent Whip either directly or indirectly procured the arrest of the plaintiff if the testimony of the witness Halpern was believed by the jury.

This Court after carefully reviewing the evidence on the second presentation to it of the Takahashi case (62 App. D. C. *supra*) said as follows:

“We are clearly of the view that there was substantial evidence tending to show that the General Manager Levy, and the store superintendent Mar-

low, representing the defendant *either commanded the arrest or instigated the police to make it*. The mere declaration of the defendant's agent to the police officer that 'we have nothing to do with it (the arrest)' is not conclusive. The jury should have been permitted to say whether that declaration was made in good faith or whether it was merely a subterfuge." (Italics ours.)

In conclusion this Court in the Takahashi case (62 App. D. C., *supra*, said:

"Having offered substantial evidence to the effect that plaintiff's arrest and imprisonment were directly or indirectly at the procurement of the defendant and without probable cause, the burden was on the defendant to meet that evidence. It was error for the Court to direct a verdict for the defendant."

We submit that the constant presence of the defendant's agents at the time the plaintiff's arrest took place and during investigations, the questions asked the plaintiff by the defendant's agent Whip, (according to plaintiff's testimony) and the fact that said Whip accused the plaintiff of taking both the watch and coat at the police precinct (R. 17 and 25) related and mentioned herein constitutes "substantial evidence to the effect that plaintiff's arrest and imprisonment was directly or indirectly at the procurement of the defendant and without probable cause * * *." This, it is submitted, gave rise to a pure question of fact and a question for the jury alone to decide and not the Court. The question having been properly submitted by the Court to the jury and the jury having decided in favor of the plaintiff, in the lower court, shows that the jury apparently believed that the constant presence and active

participation of the defendant's agents, during the arrest of the plaintiff and subsequent thereto was not done in good faith and directly or indirectly either commanded the arrest or instigated the police officers to make it and procured the arrest of the plaintiff without probable cause.

We further submit that apparently the jury was correct in its conclusion that what the defendant's agents did, was not done in good faith and perhaps had in mind many facts disclosed by the evidence to bring them to that conclusion. Another one of these facts is now called to the attention of the court, because it is deemed significant, particularly in view of the defendant's contention that information only was given by the defendant's agent to the police officers. The court's attention is called to the testimony of the defendant's agent Whip himself (R. 66 and 67) wherein he testified on cross examination that after the plaintiff had been lodged in No. 2 Precinct, he returned to the parking lot adjacent to the telephone company's R St. exchange, for the purpose of further interviewing the person called "Shorty" who had been interviewed in his (Whip's) presence earlier on the same day (R. 62-66) namely the day of the arrest, by the Metropolitan Police Officers at which time the said "Shorty" could not positively identify the plaintiff. The record will further show (R. 65) that the said Whip saw the same colored person "Shorty" before he went to the lot with the officers to see him and before the thefts were reported to the police department by him. In this connection, it is submitted that if the defendant's agent Whip was merely an identifying

witness in the first place and only supplied information to the police officers who made the arrest, he would have no reason to return to the said "Shorty" for the purpose of talking with him again. This serves to accentuate the apparent interest of the said Whip and his desire to have the plaintiff arrested and thereafter making every attempt to pin the theft of the watch and coat on the plaintiff. Certainly the jury could have legitimately inferred from this fact alone that the defendant's agent Whip had an interest in bringing about the arrest of the plaintiff and actually participated in it and was desirous of pinning the crime on the plaintiff. Could it not also be reasonably inferred from this one fact alone that the said Whip was not satisfied with the said "Shorty's" failure to identify the plaintiff earlier in the day and he had instructed the police officers to hold the plaintiff in the Precinct and to bring the plaintiff to police headquarters the same evening, for the purpose of allowing the said "Shorty" to have another look at the plaintiff, supposing and with the hope that he would identify the plaintiff as the man whom he had seen in the telephone company's exchange building.

In other words, the question here presented is not only what the responsible agent of the defendant might have said, in connection with the arrest and the subsequent investigation which followed thereafter, but what he did throughout the entire matter. It is submitted that physical facts and actions oftentimes speak much louder than words which, we urge, is plainly the situation in the instant case.

In the case of *Takahashi vs. Hecht Co.*, 60 App. D. C. *supra*, at page 179, this court cited with approval the case of *Adams vs. W. & G. R. R. Co.*, 9 App. D. C. 26, 30, (which we submit is authority for the contention here presented) and said:

“As we have already had occasion to say, in *Adams vs. W. & G. R. R. Co.*, ‘the court is never justified in directing a verdict except in cases where, conceding the credibility of the witnesses and giving full effect to every legitimate inference that may be adduced from their testimony, it is nevertheless plain that the party has not made out a case sufficient in law to entitle him to a verdict and judgment thereon.’ ”

It is submitted that the testimony of the plaintiff alone, wherein he stated that the defendant's agent Whip accused him in the presence of the arresting officers of stealing both the watch and coat, plus his (Whip's) presence in connection with everything that was done concerning plaintiff's arrest, the legitimate inference could readily be drawn that the defendant's agent Whip directly or indirectly commanded his arrest or instigated the police officers to make it.

One other decision cited by counsel for the defendant is the case of *Kinchlow v. Peoples Rapid Transit Co., et al.*, 66 App. D. C. 382. The facts of this case clearly show that the defendant's agent, the bus driver, merely reported to a police officer that one of his passengers was at the time sitting in the wrong section of his bus in violation of a Virginia statute prohibiting the same. At the same time he pointed out the particular passenger (plaintiff) who was violating said statute to the police officer who made the arrest. The defend-

ant or its agent in no way participated in the arrest of the plaintiff. The plaintiff was arrested on a disorderly conduct charge which grew out of her refusal to move her seat, causing the officers to use force, in which the defendant's agent took no part. These facts, briefly stated, it is true, are sufficient, we submit, to clearly demonstrate that said case is not in point with the case at bar and therefore no further comment concerning it is deemed necessary.

We submit that the law laid down by this court in the Takahashi cases is applicable to the facts presented in the case now before this court. Under and by virtue of the authority of the Takahashi cases, the evidence offered below, as shown by the record herein, is sufficient and shows beyond any doubt that the defendant, through its agents, either directly or indirectly procured the arrest of the plaintiff. For that reason the court below did not err in denying the defendant's motion for a directed verdict. We do not differ with counsel for defendant concerning the law enunciated by this court in both *Prigg vs. Lansburgh & Bro.*, *supra*, and *Kinchlow vs. Peoples Rapid Transit Co.*, *et al.*, *supra*, cited by counsel for the defendant because the facts in both fall short of showing that the defendant either directly or indirectly procured the arrest of the plaintiff, but we do submit that they do not apply to the instant case because the facts as shown by the record are amply sufficient in showing that the defendant *either commanded the arrest or instigated the police officers to make it.*

It is finally submitted that all of the facts have not been recited and only some facts from the evi-

dence, which, it is contended were sufficient to take the case to the jury, have been mentioned. The sole question before this court being whether the court below erred in refusing to direct a verdict in favor of the defendant, at the close of the case. It is well settled that if the evidence in the trial of a case presents facts upon which the jury could find in favor of the plaintiff, then the case should be submitted to the jury. It is contended that the facts which have been recited and called to the attention of this court are amply sufficient to justify a finding for the plaintiff.

Conclusion.

In conclusion the plaintiff respectfully contends that the nature of all the evidence presented at the trial was of such a character that the jury was entirely able to intelligently consider and thereafter render a verdict in favor of the plaintiff on the ground that the defendant's agents actively participated in the arrest of the plaintiff and either directly or indirectly caused his arrest to be brought about. It is inconceivable that any jury would have done otherwise, particularly in view of the fact, as has already been pointed out, that said agents of the defendant were at all times present when anything whatsoever was done in connection with the arrest of the plaintiff. In view of the well settled rule of law that the evidence must be considered in its most favorable aspect to the plaintiff before the court can direct a verdict in favor of the defendant, already mentioned herein, it is respectfully contended that the evidence brought about a pure question of fact, which was the province of the

jury to decide, and not a question for the court to decide. The jury having decided in favor of the plaintiff, no error was committed by the court below in its refusal to direct a verdict in favor of the defendant and thereby take the case away from the jury.

It is respectfully submitted that the court below committed no error and that the verdict of the jury was proper and consistent with all the evidence and that, accordingly, the judgment appealed from should be affirmed.

Respectfully submitted,

LESTER WOOD,
ISADORE H. HALPERN,
Attorneys for Appellee.